WSR 13-07-082
PROPOSED RULES
DEPARTMENT OF FINANCIAL INSTITUTIONS
(Securities Division)
[Filed March 20, 2013, 11:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-07-089.

Title of Rule and Other Identifying Information: The securities division proposes to amend the investment adviser rules in chapter 460-24A WAC. The amendments would update various provisions of the investment adviser rules, including the rules regarding examination and registration requirements, financial reporting requirements, custody, performance compensation arrangements, books and records requirements, and unethical business practices. The amendments would add new rule sections addressing compliance policies and procedures, proxy voting, and advisory contracts. In addition, the amendments would create exemptions from registration for certain private fund and venture capital fund advisers. The amendments would repeal WAC 460-24A-058, which defines when an application is considered filed; and make additional updates, clarifications, and changes to the rules.

Hearing Location(s): Department of Financial Institutions (DFI), 150 Israel Road S.W., Tumwater, WA 98501, on May 21, 2013, at 1 p.m.

Date of Intended Adoption: May 22, 2013.

Submit Written Comments to: Jill Vallely, Associate General Counsel, Securities Division, P.O. Box 9033, Olympia, WA 98507-9033, e-mail jill.vallely@dfi.wa.gov, fax (360) 704-7035, by May 13, 2013.

Assistance for Persons with Disabilities: Contact Carolyn Hawkey, P.O. Box 9033, Olympia, WA 98507, by May 13, 2013, TTY (360) 664-8126 or (360) 902-8760.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The securities division proposes to amend the rules in chapter 460-24A WAC in order to address changes in the federal law and updates to NASAA model rules, and to increase protections for the investing public who may use the services of investment advisers. The proposed rules would make the following changes:

- Amend the definitions section at WAC 460-24A-005;
- Create a new section at WAC 460-24A-035 which clarifies who is a client and specifies how to count clients for the purposes of determining who needs to register as an investment adviser under RCW 21.20.040(3);
- Update the examination and registration requirements at WAC 460-24A-050 to make them consistent with NASAA model rules;
- Amend the financial reporting requirements at WAC 460-24A-060 to require advisers who have custody to file an audited balance sheet with the securities division. In addition, advisers who have custody as defined by WAC 460-24A-005 (1)(a)(iii) and who comply with the safekeeping requirements in WAC 460-24A-107 (1)(b) by providing audited financial statements of the pooled investment vehicle must file those financial statements with the securities division;
- Create a new section at WAC 460-24A-071 which adds an exemption from investment adviser registration for advisers to qualified private funds (which does not apply to advisers exempt from federal registration under Section 3 (c)(1) of the Investment Advisers Act of 1940);
- Create a new section at WAC 460-24A-072 which adds an exemption from investment adviser registration for venture capital fund advisers;
- Create a new section at WAC 460-24A-080 which provides for the termination of pending applications where the applicants have taken no action for nine months;
- Amend the custody rules at WAC 460-24A-105, 460-24A-106, and 460-24A-107 to require certain written agreements and to clarify the requirements for account statements to pooled investment vehicles;
- Create a new section at WAC 460-24A-120 which requires investment advisers with more than one employee to adopt compliance policies and procedures reasonably designed to prevent violations of the Securities Act by the adviser and its supervised persons;
- Create a new section at WAC 460-24A-125 which requires investment advisers who vote client securities to adopt policies and procedures reasonably designed to ensure that the adviser votes in the best interest of the clients;
- Create a new section at WAC 460-24A-130 which clarifies the requirements for investment advisory contracts;
- Update the brochure rule at WAC 460-24A-145 to make it consistent with the NASAA model rule;
- Amend the performance compensation rule at WAC 460-24A-150 consistent with the NASAA model rule and the Securities and Exchange Commission's amended rule;
- Amend the books and records requirement at WAC 460-24A-200 to clarify additional recordkeeping requirements;
- Amend the unethical business practices rule at WAC 460-24A-220 to specify additional unethical practices;
- Repeal WAC 460-24A-058, which defined when an application was considered filed; and
- Make additional updates, amendments, and clarifications.

Reasons Supporting Proposal: The proposed amendments should be adopted in order to reflect changes in federal law which impact the state regulation of investment advisers. The amendments will incorporate provisions from updated NASAA model rules which will help create uniformity among the states. In addition, the securities division believes the amendments should be adopted because they will provide

increased protections for the investing public who use the services of investment advisers or invest in pooled investment vehicles managed by investment advisers.

Statutory Authority for Adoption: RCW 21.20.005, [21.20].020, [21.20].030, [21.20.]040, [21.20].050, [21.20].060, [21.20].070, [21.20].080, [21.20].090, [21.20].100, [21.20].330, [21.20].340, [21.20].450, and [21.20].702.

Statute Being Implemented: Chapter 21.20 RCW.

Rule is necessary because of federal law, Dodd-Frank Act enacted July 21, 2010, Public Law No. 111-203.

Name of Proponent: DFI, securities division, governmental.

Name of Agency Personnel Responsible for Drafting: Jill Vallely, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760; Implementation: Scott Jarvis, Director, DFI, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760; and Enforcement: William Beatty, Director, Securities, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Introduction: This small business economic impact statement (SBEIS) is written in support of proposed rule amendments drafted by the department of financial institutions, securities division (securities division) to amend the rules in chapter 460-24A WAC pertaining to investment advisers.

The investment adviser rules have not been amended since 2008. Since that time, there have been many changes in the financial industry and in the laws regulating investment advisers. For instance, as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the number of investment advisers subject to state registration has increased. In addition, there have been numerous changes and updates to NASAA model rules, which are adopted by many states for use in the regulation of investment advisers. Many of the proposed amendments to the rules would make Washington's rules consistent with current federal law and NASAA model rules. The securities division has also identified certain rules which could be improved to increase investor protection and to reduce the potential for fraud.

The securities division has involved its registered investment advisers and noticed filed investment advisers throughout the rule-making process and has made changes to the proposed rule amendments in response [to] their concerns. The securities division finds that the proposed rule amendments should be adopted in order to better protect clients of investment advisers in Washington.

Procedural Background: On March 19, 2010, the Washington securities division filed a CR-101 preproposal statement of inquiry with the code reviser's office stating that it was considering possible updates, amendments, and additions to its investment adviser rules. The securities division subsequently prepared a draft of amendments to its investment adviser rules which was distributed to interested persons in a mailing on August 13, 2012. The securities division also conducted a survey of state registered investment advisers and notice filed investment advisers to determine the costs associated with the rule amendments.

Since that time, the securities division has made certain changes to the draft amendments in response to feedback received from investment advisers registered or notice [noticed] filed in the state of Washington. The securities division now intends to proceed with the rule making to amend chapter 460-24A WAC by formally proposing the draft amendments in a CR-102 filing with the code reviser.

Summary of Proposed Rule Amendments: The proposed rule amendments would amend twenty-seven rule sections under chapter 460-24A WAC, create seven new sections, and repeal one section.

The amendments would update various provisions of the investment adviser rules, including the rules regarding financial reporting requirements, custody, performance compensation arrangements, books and records, and unethical business practices. The amendments would add new rule sections addressing proxy voting, advisory contracts, and compliance procedures and practices, and would create exemptions from registration for certain private fund advisers and venture capital fund advisers. Many of these changes would make Washington's rules consistent with current federal law and NASAA model rules. Finally, the amendments would repeal WAC 460-24A-058, which defined when an application for investment adviser or investment adviser representative registration is considered filed. The securities division determined that this rule section was unnecessary. The proposed amendments are described in greater detail below:

Financial Reporting Requirements: The rule making would amend the financial reporting requirements in WAC 460-24A-060. The amendments would require investment advisers who have custody, or who require payment of advisory fees six months in advance and in excess of $500 per client, to file an audited balance sheet with the securities division each year. Currently, a balance sheet must be filed but it does not need to be audited. In addition, the amendments would require advisers who have custody as defined in WAC 460-24A-005 (1)(a)(iii) (management of a pooled investment vehicle) and who have indicated they will comply with the safekeeping requirements of WAC 460-24A-107 (1)(b) by providing audited financial statements of the pooled investment vehicle to limited partners, to file the audited statements of the pooled investment vehicle with the securities division. Under the current rules, the annual audited financial statements are provided to investors to fulfill the safekeeping requirements but are not required to be filed with the securities division.

Custody: The amendments would make various changes and clarifications to the custody rules for investment advisers at WAC 460-24A-105, 460-24A-106, and 460-24A-107. Under the current WAC 460-24A-105, if the investment adviser sends account statements, rather than the qualified custodian, an independent certified public accountant (CPA) must verify client funds and securities by examination once per year. The amendments to WAC 460-24A-105 would provide that the investment adviser enter into a written agreement with the CPA who will provide these services. The agreement must contain certain provisions specified in the amendments that are designed to protect against fraud. In

addition, an investment adviser who acts as a qualified custodian must enter into an agreement with an independent CPA to conduct an examination to verify funds and securities.

The amendments will revise WAC 460-24A-106 to clarify that advisers who have the authority to directly deduct fees from client accounts must comply with the custody requirements in WAC 460-24A-105 as well as the additional safekeeping requirements specified in WAC 460-24A-106.

The amendments revise WAC 460-24A-107, which provides additional custody requirements for investment advisers that manage pooled investment vehicles. The amendments would require that if the additional custody requirements in WAC 460-24A-107(1) are met by engaging an independent party to authorize withdrawals, the investment adviser must enter into a written agreement with the independent party. The amendments specify that if the adviser uses an independent party to meet the requirements of WAC 460-24A-107 (1)(a), the investment adviser is not required to comply with the net worth and bonding requirements for an investment adviser with custody. If the adviser meets the additional custody requirements of WAC 460-24A-107(1) by providing audited financial statements, the rule amendments specify to whom and when the audited financial statements must be delivered.

Finally, the amendments to WAC 460-24A-107 clarify that an investment adviser to a pooled investment vehicle must deliver account statements to each limited partner or beneficial owner of the pooled investment vehicle. The account statements must include the total amount of all additions and withdrawals to the fund, the opening and closing value at the end of the quarter, a listing of all long and short positions on the closing date of the statements, the total amount of additions to and withdrawals from the fund by the investor, and the total value of the investor's interest in the fund at the end of the quarter.

Performance Compensation Arrangements: The rule making will make several changes to WAC 460-24A-150, which addresses performance compensation arrangements. The amendments adopt the formula for permitted performance compensation arrangements and disclosure requirements found in the current NASAA performance-based compensation exemption for investment advisers model rule. In addition, the amendments add provisions to conform to the proposed revisions to the NASAA performance-based compensation exemption for investment advisers model rule. These provisions state that advisers who are *not* registered or required to be registered may enter into performance-based compensation agreements. They also clarify that a beneficial owner of an equity interest in certain investment vehicles is a client for the purpose of the performance compensation rule. The rule amendments also adopt transition rules that allow performance-based compensation arrangements that were permitted by the rule in place at the time the advisory contract was signed.

Books and Records: The rule making will amend WAC 460-24A-200, which specifies the books and records to be maintained by investment advisers. The amendments will add the following to the books and records that must be maintained:

- Written information about each security an adviser recommends a client buy or sell that is the basis for making any recommendation or providing any investment advice to such client;
- Records to be maintained following inadvertent custody of client securities or funds, pursuant to the NASAA custody requirements for investment advisers model rule; and
- A copy of a written business continuity plan which identifies procedures to be followed in the event of an emergency or significant business disruption and which is reasonably designed to enable the investment adviser to meet its fiduciary obligations to clients.

The amendments will require investment advisers who have custody to keep the following additional records:

- A copy of all documents executed by the client under which the adviser is authorized of [or] permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian;
- A copy of each client's quarterly account statements as generated and delivered by the qualified custodian, plus any statements generated by the adviser and delivered to the client;
- Any special examination reports;
- Any findings by the independent CPA of any material discrepancies;
- Evidence of the client's designation of an independent representative, if applicable;
- For investment advisers who manage a pooled investment vehicle: Current account statements, and specific records to demonstrate compliance with either WAC 460-24A-107 (1)(a) or (b); and
- For investment advisers with custody under WAC 460-24A-109(3): A copy of the written statement and signed acknowledgment given to each beneficial owner explaining why the adviser is not complying with WAC 460-24A-105.

In addition, the rule making will revise the provisions regarding records retention and preservation in WAC 460-24A-200(7) in order to conform to the NASAA investment advisers recordkeeping model rule.

Unethical Practices: The rule making will amend WAC 460-24A-220, which specifies certain practices as unethical business practices for investment advisers.

The unethical business practices rule currently states that it applies to investment advisers and federal covered advisers. The amendments add that the rule applies to investment adviser representative[s] as well. The amendments clarify that advisers may not disclose any current or former client's financial information unless required by law or consented to by the client. The amendments clarify that the adviser may not enter into an advisory contract that does not comply with the draft rule at WAC 460-24A-130.

In addition, the amendments specify that it is an unethical business practice for investment advisers, investment adviser representatives, and federal covered advisers to make in the solicitation of clients, any untrue statement of fact, or

omitting to state a material fact necessary in order to make the statement made, in light of the circumstances in which it was made, not misleading.

Proxy Voting: The rule making will add a new section to the rules, WAC 460-24A-125, which will require investment advisers who exercise voting authority with respect to client securities to adopt policies and procedures that are designed to ensure that the adviser votes client securities in the best interest of the clients. Investment advisers who exercise voting authority must disclose to clients how they can obtain information on how their securities were voted.

Advisory Contracts: The rule making will add a new section to the rules, WAC 460-24A-130, which specifies the requirements for the investment advisory contract. The rule is based on the NASAA model rule on the contents of the investment advisory contract and incorporates existing advisory contract requirements currently found in the unethical practices provision at WAC 460-24A-220(16). The draft rule states it is unlawful under RCW 21.20.020 and 21.20.030 to enter into an advisory contract unless it provides in writing:

- The services to be provided, the term of the contract, the investment advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of termination or nonperformance of the contract, and whether and the extent to which the contract grants discretionary authority to the adviser and any limits on such authority;
- That no direct or indirect assignment or transfer [of] the contract may be made without the written consent of the client;
- That the adviser shall not be compensated on the basis of a share of capital gains except as permitted under WAC 460-24A-150;
- That if the adviser is a partnership, it shall notify the client of any change to the membership of the partnership within a reasonable time after the change;
- That if the adviser has custody as a consequence of its authority to make withdrawals from client accounts to pay the adviser's advisory fees, that the contract gives the adviser the authority to deduct fees from the account held by the qualified custodian;
- The nature and extent to which the adviser is granted proxy voting authority with respect to client securities;
- The terms for termination of the contract;
- The nature and extent to which the adviser may electronically deliver documents including account statements and fee invoices, and the extent and manner in which the client may opt out of receiving documents electronically; and
- That the contract shall be governed by the laws of the state in which the client resides.

Compliance Procedures and Practices: The rule making would create new section WAC 460-24A-120, concerning compliance procedures and practices. The rule states that it is unlawful for an investment adviser who has more than one employee to provide investment advice unless the adviser adopts and implements written procedures reasonably designed to prevent violations of the Securities Act of Washington by the investment adviser and its supervised persons. The rule specifies that such policies must be reviewed for adequacy at least annually, and an individual must be designated as responsible for administering the policies and procedures.

Additional Provisions: In addition to the changes listed above, the rule making will:

- Create new section WAC 460-24A-071 which adds an exemption from investment adviser registration for advisers to qualified private funds (which does not apply to advisers of section 3 (c)(1) funds);
- Create new section WAC 460-24A-072 which adds an exemption from investment adviser registration for venture capital fund advisers;
- Create new section WAC 460-24A-035 which clarifies who is a client and specifies how to count clients for the purposes of determining who needs to register as an investment adviser under RCW 21.20.040(3);
- Create new section WAC 460-24A-080 which provides for the termination of pending applications where the applicants have taken no action for nine months;
- Update the examination and registration requirements at WAC 460-24A-050 to make them consistent with NASAA model rules;
- Update the brochure rule at WAC 460-24A-145 to make it consistent with the NASAA model rule;
- Repeal WAC 460-24A-058 which defined when an application was considered filed; and
- Make additional updates, amendments, and clarifications.

Need for Economic Impact Statement: RCW 19.85.-030 provides that an agency shall prepare an SBEIS if the rules it is proposing would impose more than minor costs on businesses in an industry. Minor costs are defined by RCW 19.85.020 as a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whatever is greater; or one percent of annual payroll. The securities division determined that an SBEIS may be required for this rule making.

Survey of Investment Advisers: In order to gather the information to prepare an SBEIS, RCW 19.85.040 provides that an agency may survey a representative sample of affected businesses to assist in the accurate assessment of the costs of a proposed rule. To that end, the securities division prepared a small business economic impact survey to survey its state registered investment advisers and a representative sample of federal registered advisers that are notice filed in the state of Washington.

In general, investment advisers in Washington with assets under management of less than $100 million must register with the state. Investments advisers with assets under management of $100 million or more must register with the Securities and Exchange Commission (SEC) and make a notice filing with the securities division if they do business in Washington. At the time of the survey, the securities division had six hundred sixty-three state registered investment advis-

ers and one thousand five hundred twenty-seven federal registered notice filed advisers.

On August 13, 2012, the securities division sent a letter by e-mail to all state registered investment advisers (and applicants with a pending investment adviser application) and a random selection of approximately fifty percent of the federal registered investment advisers notice filed in Washington. If a state registered investment adviser did not have an e-mail address on file, the securities division sent a hard copy of the letter by regular mail. The letter contained a link to an online survey designed to determine the economic impact of the proposed amendments to the rules under chapter 460-24A WAC on small businesses. The letter explained the reasons for conducting the survey and requested that recipients complete the survey by following the link provided.

The online survey consisted of thirty-six questions. Each question in the survey focused on a proposed rule amendment and provided a background statement briefly explaining the amendment. The survey asked whether proposed changes to a rule section would cause increased costs. The survey then requested information on the additional costs of the professional services, equipment, supplies, labor, and administrative costs associated with each proposed rule change. Each question also allowed a free form response for survey takers to explain any additional costs. The survey also gathered data on the number of employees each investment adviser had, and questioned whether the rule making as a whole would cause a loss of revenue or the loss or addition of any jobs.

The survey period lasted from August 13, 2012, until September 7, 2012. The securities division received three hundred fourteen unique responses. The securities division received responses or partial responses from two hundred seven state registered investment advisers and one hundred seven federal registered advisers notice filed in Washington. Of the respondents, two hundred eighty-six were small businesses as defined by RCW 19.85.020(3) of the Regulatory Fairness Act. All state registered investment advisers who responded to the survey are small businesses because they all have less than fifty employees. The results of the survey are discussed below.

REQUIRED ELEMENTS OF SBEIS

A brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rules and of the kinds of professional services that a small business is likely to need in order to comply with the requirements. An analysis of the costs of compliance for identified industries, including costs of equipment, supplies, and increased administrative costs.

The proposed rule amendments make a variety of changes to the existing investment adviser rules, some of which will create new recordkeeping, reporting, or compliance requirements for licensees. Registered investment advisers already maintain certain records required of investment advisers under WAC 460-24A-200. As they do currently, investment advisers registered in Washington will need to demonstrate compliance with the amended rules by providing required records during periodic examinations of the investment adviser by the securities division.

The rule making creates certain new recordkeeping and compliance requirements, including the following: Revising and executing advisory contracts to meet the requirements of the new rule; drafting or revising compliance policies and procedures; drafting or revising agreements with independent CPAs and independent parties (if applicable) to meet the specification of the rules; developing proxy voting disclosures (if applicable); drafting business continuity plans; and drafting and maintaining written information on securities that the adviser recommends.

As a result of the rule amendments, investment advisers may incur expenses by the need to review existing procedures, documents, and agreements to ensure compliance with the new rules. Though not required to do so by the proposed rules, investment advisers may choose to hire professional services to assist them in complying with the new rules. Investment advisers may hire legal or other professional services to create or revise advisory agreements, compliance policies and procedures, proxy voting disclosures, account statements for pooled investment vehicles, and other documents and agreements used in the investment adviser's business. Investment advisers may also consult professional services for advice on establishing systems or methods to ensure compliance.

Certain advisers, such as those who have custody, will be required to use the services of an independent CPA in order to file an audited balance sheet for the investment adviser each year.

In addition, the proposed rule making may have an economic impact on investment advisers in the form of increased equipment, supplies, labor, and administrative costs. These costs may relate to postage and other mailing costs, copying expenses, computer or software expenses, and expenses associated with recordkeeping and record retention. The rule making may cause investment advisers to hire additional employees to ensure compliance.

The securities division surveyed investment advisers to determine if the new requirements would add costs to their business, and if so, how much. The survey provided a summary of the rule changes by section, and asked first whether the proposed changes to each section would create any additional costs for the investment adviser. The following chart provides the responses from the survey question regarding whether compliance with the proposed changes to each rule section would create any additional costs.

Whether Rule Changes Will Create Additional Costs		
Rule Provision	**Yes**	**No**
WAC 460-24A-005	24%	76%
WAC 460-24A-010	4%	96%
Plain English Updates	11%	89%
WAC 460-24A-035	5%	95%
WAC 460-24A-040	2%	98%
WAC 460-24A-047	8%	93%
WAC 460-24A-050	11%	89%
WAC 460-24A-059	0%	100%

Whether Rule Changes Will Create Additional Costs		
Rule Provision	Yes	No
WAC 460-24A-060	13%	87%
WAC 460-24A-070	0%	100%
WAC 460-24A-071	1%	99%
WAC 460-24A-072	0%	100%
WAC 460-24A-080	4%	96%
WAC 460-24A-100	8%	92%
WAC 460-24A-105	9%	91%
WAC 460-24A-106	13%	87%
WAC 460-24A-107	4%	96%
WAC 460-24A-108	2%	98%
WAC 460-24A-109	0%	100%
WAC 460-24A-120	19%	81%
WAC 460-24A-125	10%	90%
WAC 460-24A-130	24%	76%
WAC 460-24A-140	1%	99%
WAC 460-24A-145	1%	99%
WAC 460-24A-150	1%	99%

Whether Rule Changes Will Create Additional Costs		
Rule Provision	Yes	No
WAC 460-24A-160	1%	99%
WAC 460-24A-170	2%	98%
WAC 460-24A-200	25%	75%
WAC 460-24A-205	6%	94%
WAC 460-24A-220	8%	92%
WAC 460-24A-058	0%	100%

Where the survey takers indicated that the rule changes in a particular section would create additional costs, the survey requested information regarding the amount of increased costs of professional services, equipment, supplies, labor, and administrative costs attributable to each section of the rules. Each survey taker provided information regarding its number of employees, which allowed the securities division to calculate the average cost per employee for each investment adviser. These costs per employee were then averaged together.

The following chart provides the average cost increase per employee for each rule change for all survey respondents.

Average Cost Increase					
Rule Provision	Prof'l. Services	Equipment	Supplies	Labor	Admin.
WAC 460-24A-005	$ 370.87	$ 7.58	$ 18.52	$ 209.19	$ 197.54
WAC 460-24A-010	$ 15.21	$ -	$ 0.34	$ 4.86	$ 5.77
Plain English Updates	$ 101.94	$ 0.17	$ 1.82	$ 37.12	$ 67.19
WAC 460-24A-035	$ 25.25	$ -	$ 0.37	$ 7.21	$ 18.92
WAC 460-24A-040	$ 0.98	$ -	$ 0.90	$ 0.79	$ 1.42
WAC 460-24A-047	$ 25.89	$ 0.18	$ 0.26	$ 8.90	$ 15.01
WAC 460-24A-050	$ 118.29	$ -	$ 0.42	$ 9.23	$ 103.62
WAC 460-24A-059	$ 3.61	$ -	$ -	$ 3.61	$ -
WAC 460-24A-060	$ 313.48	$ 1.24	$ 0.01	$ 82.90	$ 181.84
WAC 460-24A-070	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-071	$ 129.74	$ -	$ 0.01	$ 0.05	$ 0.51
WAC 460-24A-072	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-080	$ 29.56	$ 0.09	$ 0.10	$ 16.03	$ 9.64
WAC 460-24A-100	$ 72.45	$ -	$ 0.57	$ 40.32	$ 34.32
WAC 460-24A-105	$ 255.34	$ 9.08	$ 11.91	$ 75.76	$ 119.20
WAC 460-24A-106	$ 361.52	$ 8.55	$ 31.40	$ 134.33	$ 188.08
WAC 460-24A-107	$ 173.03	$ 1.57	$ 10.43	$ 62.01	$ 111.86
WAC 460-24A-108	$ 15.79	$ -	$ -	$ 7.80	$ 6.14
WAC 460-24A-109	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-120	$ 163.94	$ 2.17	$ 2.98	$ 65.66	$ 97.21
WAC 460-24A-125	$ 106.69	$ -	$ 0.78	$ 32.09	$ 42.47
WAC 460-24A-130	$ 120.78	$ 0.97	$ 3.86	$ 83.43	$ 58.96
WAC 460-24A-140	$ 3.97	$ -	$ -	$ 3.97	$ -
WAC 460-24A-145	$ 26.03	$ 0.68	$ 4.26	$ 13.30	$ 10.78
WAC 460-24A-150	$ 7.85	$ -	$ -	$ -	$ 1.66
WAC 460-24A-160	$ 4.94	$ -	$ 0.48	$ 3.28	$ 1.18

Average Cost Increase					
Rule Provision	**Prof'l. Services**	**Equipment**	**Supplies**	**Labor**	**Admin.**
WAC 460-24A-170	$ 16.80	$ -	$ -	$ 12.00	$ 6.40
WAC 460-24A-200	$ 433.80	$ 17.53	$ 12.23	$ 212.75	$ 282.62
WAC 460-24A-205	$ 43.59	$ 0.30	$ 1.97	$ 11.13	$ 19.40
WAC 460-24A-220	$ 104.94	$ -	$ 0.34	$ 59.42	$ 59.58
WAC 460-24A-058	$ 1.05	$ -	$ -	$ 1.05	$ -

The following chart provides the average cost increase per employee only for those investment advisers who indicated that a particular rule change would create additional costs.

Average Additional Costs					
Rule Provision	**Prof'l. Services**	**Equipment**	**Supplies**	**Labor**	**Admin.**
WAC 460-24A-005	$ 2,217.79	$ 566.67	$ 553.73	$ 2,156.84	$ 1,373.60
WAC 460-24A-010	$ 742.54	$ -	$ 100.00	$ 356.17	$ 422.54
Plain English Updates	$ 982.06	$ 50.00	$ 105.00	$ 715.24	$ 970.89
WAC 460-24A-035	$ 654.24	$ -	$ 52.50	$ 513.89	$ 490.10
WAC 460-24A-040	$ 92.92	$ 0.20	$ 85.07	$ 75.07	$ 100.94
WAC 460-24A-047	$ 402.69	$ 25.10	$ 14.48	$ 249.27	$ 262.67
WAC 460-24A-050	$ 1,478.63	$ 0.24	$ 16.46	$ 317.15	$ 1,676.25
WAC 460-24A-059	$ 1,000.00	$ -	$ -	$ 1,000.00	$ -
WAC 460-24A-060	$ 2,800.45	$ 333.33	$ 2.00	$ 1,586.96	$ 2,866.73
WAC 460-24A-070	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-071	$ 17,644.23	$ 0.40	$ 2.00	$ 14.00	$ 68.69
WAC 460-24A-072	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-080	$ 800.99	$ 12.60	$ 9.46	$ 543.03	$ 373.24
WAC 460-24A-100	$ 963.52	$ 0.20	$ 25.43	$ 975.02	$ 652.07
WAC 460-24A-105	$ 2,953.09	$ 482.91	$ 633.39	$ 1,439.37	$ 1,981.71
WAC 460-24A-106	$ 2,870.22	$ 447.93	$ 913.97	$ 1,599.80	$ 2,053.22
WAC 460-24A-107	$ 4,883.31	$ 400.00	$ 1,325.00	$ 5,250.00	$ 3,551.41
WAC 460-24A-108	$ 679.18	$ -	$ -	$ 671.05	$ 527.78
WAC 460-24A-109	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-120	$ 1,036.91	$ 275.00	$ 125.83	$ 790.99	$ 819.78
WAC 460-24A-125	$ 1,437.48	$ -	$ 100.00	$ 746.94	$ 776.54
WAC 460-24A-130	$ 601.48	$ 120.83	$ 137.13	$ 741.93	$ 458.82
WAC 460-24A-140	$ 1,000.00	$ -	$ -	$ 1,000.00	$ -
WAC 460-24A-145	$ 381.22	$ 85.00	$ 117.89	$ 367.88	$ 243.97
WAC 460-24A-150	$ 656.97	$ -	$ -	$ -	$ 208.23
WAC 460-24A-160	$ 413.21	$ -	$ 121.21	$ 274.12	$ 148.03
WAC 460-24A-170	$ 840.00	$ -	$ -	$ 1,000.00	$ 533.33
WAC 460-24A-200	$ 2,232.25	$ 481.04	$ 377.62	$ 1,695.16	$ 1,837.01
WAC 460-24A-205	$ 904.39	$ 75.00	$ 163.62	$ 346.47	$ 536.77
WAC 460-24A-220	$ 1,639.63	$ -	$ 42.50	$ 1,485.53	$ 1,354.14
WAC 460-24A-058	$ 263.16	$ -	$ -	$ 263.16	$ -

Analysis of Increased Costs: The survey results indicated that certain rule changes would create greater costs than others. These were the changes to the definitions section, the plain English updates, the financial reporting requirements and application requirements, the custody requirements, the compliance policies and procedures requirement, the proxy voting section, the advisory contracts section, and the books and records section. The survey results are described in further detail below.

WAC 460-24A-005 Definitions.

The securities division was surprised that twenty-five percent of survey respondents indicated that the changes to WAC 460-24A-005, the definitions section of the investment adviser rules, would lead to increased costs. The responses

indicated an average cost per employee of $370.87 for professional services, $209.19 for labor, and $197.54 for increased administrative costs.

The securities division added several definitions to WAC 460-24A-005, including definitions taken from NASAA model rules or from the Form ADV glossary. The securities division proposed many of these definitions in order to create uniformity with other states. In the instance of definitions taken from the Form ADV glossary, investment advisers were already subject to these definitions as all registered advisers must complete a Form ADV as part of their application.

The survey respondents commented upon the proposed revision of the definition of custody. The current definition allows funds to be returned within three business days without being deemed to have custody of the funds. However, the draft definition stated that an investment adviser has custody of funds if the adviser fails to return customer funds received inadvertently within one business day. Survey respondents indicated this change would cost them money and that returning funds within one business day might be difficult to accomplish.

The survey question regarding the definitions section was the first substantive question of the survey. It appeared from the free form answer responses for this section that many of the respondents may have been providing comments related to other rule subsections, or all of the rule revisions collectively. For instance, comments in response to this question expressed that providing quarterly statements and updating written supervisory policies would increase costs. These provisions do not appear in definitions section. Therefore, it is not clear whether some survey respondents may have provided dollar figures in response to this question that were intended to apply to the rule making as a whole. It may be that some of the expenses reported in response to this survey question refer to costs associated with other sections of the rules.

Plain English Updates: In drafting amendments to the investment adviser rules, the securities division made an effort to revise the text of the rules to use "plain English" style, which is a policy initiative in Washington state. For instance, constructions such as "an investment adviser must…" were replaced with "if you are an investment adviser, you must…." Such changes are intended to make the rules easier for laypersons to read and understand. Because the rule making will make substantive changes to multiple sections of the investment adviser rules, the securities division decided to make "plain English" updates to several other sections at this time, namely: WAC 460-24A-020, 460-24A-030, 460-24A-045, 460-24A-057, 460-24A-110, and 460-24A-210. These changes create uniformity in the chapter, but do not substantively change the rules.

The securities division included a combined question in its survey regarding the plain English changes made to WAC 460-24A-020, 460-24A-030, 460-24A-045, 460-24A-057, 460-24A-110, and 460-24A-210. Surprisingly, eleven percent of the respondents indicated that the plain English changes would increase their costs. These costs included an average of $101.94 per employee for professional services, $37.12 for labor, and $67.19 for increased administrative expenses.

Based on the free form answer for this survey question, it appears that several survey respondents did not understand the nature of the plain English amendments. Several respondents appeared to conclude that the changes in the rules would require them to convert their own documents to plain English style. They may have been primed to think this based on recent changes by the SEC requiring that Form ADV 2 be written in plain English. However, the securities division has *not* proposed that investment advisers rewrite their documents in plain English. The securities division was merely attempting to make the text of the investment adviser rules in chapter 460-24A WAC easier to understand. As the plain English changes require no action on the part of investment advisers or others, the securities division does not believe that making the plain English changes to the investment adviser rules will create any additional costs for investment advisers.

WAC 460-24A-050 Application and examination requirements. The survey results indicated that approximately eleven percent of survey respondents believed that changes to the examination and application requirements in WAC 460-24A-050 would result in increased expenses. These expenses would include an average of $118.29 per employee for professional services and $103.62 per employee for increased administrative costs.

WAC 460-24A-050, lists the examination and application requirements for investment advisers. The requirements state that investment advisers must file the financial statements required by WAC 460-24A-060 with an application. Under WAC 460-24A-050 and 460-24A-060, investment advisers with custody must submit an audited balance sheet as part of their initial application. Requiring an audited balance sheet provision means that investment advisers with custody must hire the services of a CPA. This may increase costs.

In addition, the changes in the examination requirements may require a limited number of individuals who have never taken a licensing examination to take and receive a passing score. Such individuals may incur expenses for test preparation materials and examination fees.

Finally, the rule change specifies that investment advisers that manage pooled investment vehicles must submit certain additional documents with their applications. These documents include an account agreement with a qualified custodian, an engagement letter with a CPA, a private placement memorandum or other offering circular, a subscription agreement, and an operating agreement for the pooled investment agreement. The submission of these documents may increase costs in postage and copying; however, we note that an investment adviser who manages a pooled investment vehicle would already have these documents prepared. Furthermore, the securities division already requests these documents from investment adviser applicants who manage pooled investment vehicles and has for several years.

WAC 460-24A-060 Financial reporting requirements.

The survey results indicated that approximately thirteen percent of survey respondents believed that changes to WAC 460-24A-060 would result in increased expenses. These expenses would include an average of $313.48 per employee

for professional services, $82.90 per employee in labor, and $181.84 per employee for increased administrative expenses. Of the thirteen percent who indicated that the changes would increase costs, those costs included an average per employee of $2,800.45 for professional services, $1,586.96 of labor and $2,866.73 for increased administrative costs.

The cost increases under WAC 460-24A-060 relate to the requirement that investment advisers with custody submit an audited balance sheet. Currently, advisers submit a balance sheet but it does not need to be audited. As discussed above under the WAC 460-24A-050 heading, the new requirement will require investment advisers with custody to pay a CPA for audit services.

In addition, the changes to WAC 460-24A-060 will require the filing of audited financial statements for pooled investment vehicles by those investment advisers who choose to satisfy the custody requirements for pooled investment vehicles by provided [providing] audited financial statements for the pooled investment vehicle. There may be postage, copying, and other costs related to filing the statements with the securities division each year. Currently, investment advisers to pooled investment vehicles who choose to satisfy the custody requirements in WAC 460-24A-107 by providing audited financial statements provide these financial statements to investors but are not required to provide a copy to the securities division.

WAC 460-24A-105 Custody requirements.

The survey results indicated that approximately nine percent of survey respondents believed that changes to the custody requirements at WAC 460-24A-105 would result in increased expenses. These expenses would include an average of $255.34 per employee for professional services, $75.76 per employee for labor, and $119.20 per employee for increased administrative costs. For the nine percent of survey respondents who indicated that the rule changes would create additional costs, the average costs per employee were $2,953.09 for professional services, $1,439.37 for labor, and $1,981.71 for increased administrative costs.

The increase in costs would arise from the need for advisers who satisfy the custody rules by having regular audits to enter into agreements which contain certain provisions. Similarly, investment advisers who act as qualified custodians must comply with new provisions requiring an agreement with a CPA that meet the requirements specified in the rule. These provisions are adopted from the NASAA model custody rule and will create uniformity with other states and with the SEC's custody rules. Furthermore, these provisions serve the goal of protecting client funds which is of utmost concern. However, the professional services, labor and administrative costs to amend or create compliant agreements may create additional costs for advisers.

WAC 460-24A-106 Additional custody requirements for adviser who deduct fees.

According to the survey, thirteen percent of respondents believed that changes to the additional custody requirements at WAC 460-24A-106 for advisers who directly deduct fees would increase costs. The proposed change clarifies that WAC 460-24A-106 applies to all individuals who have custody under any of the three prongs of the custody definition in WAC 460-24A-005 *and* who deduct fees directly, not just those who have custody solely because they deduct fees directly. In the view of the securities division, the substance of the rule is not changed. However, survey takers responded differently. The survey found that there would be an average increase of $361.52 in professional services, $134.33 in labor, and $188.08 in increased administrative costs.

WAC 460-24A-107 Additional custody provisions for advisers to pooled funds.

The survey revealed that updates to WAC 460-24A-107 would increase costs for four percent of survey respondents. Averaged over all respondents, the increased costs include $173.03 per employee for professional services and $111.86 for increased administrative costs. However, for the four percent of survey respondents who indicated an increased cost, these costs included $4,883.31 per employee for administrative costs, $400 per employee for equipment, $1,325 per employee for supplies, $5,250 per employee for labor, and $3,551.41 per employee for increased administrative costs.

The proposed rule changes specify that the quarterly account statements required by WAC 460-24A-105 be sent to each beneficial owner of an interest in a pooled fund managed by the investment adviser. In addition, the rule amendments specify the information that the account statements must contain. The proposed rule changes provide some relief from the amount of information required by existing rules to be contained in account statements. However, the rule changes may require advisers who manage pooled investment vehicles to hire professional services to revise their account statements in order to comply with the rule changes if they do not already provide quarterly account statements that meet the requirements.

WAC 460-24A-120 Compliance procedures and policies.

The survey results indicated that approximately nineteen percent of survey respondents believed that the creation of the new rule provision at WAC 460-24A-120 requiring written compliance policies and procedures would result in increased expenses. The survey found that the average cost increases included $163.94 per employee in professional services, and $97.21 in increased administrative costs per employee. For the nineteen percent of survey respondents who indicated that the new rule would create additional costs, there was an average increase of $1,036.91 in professional services, $790.99 in labor, and $527.78 in increased administrative costs per employee.

The proposed rule is a new section modeled after federal Rule 206 (4)-7. Investment advisers who do not have compliance policies and procedures reasonably designed to prevent violations of the Securities Act by their employees must adopt them, and must review them at least annually. Advisers may incur costs in professional fees in designing and updating their policies, and may incur expenses in training employees in the new policies and implementing annual review procedures, among other possible expenses.

WAC 460-24A-125 Proxy voting.

The survey results indicated that ten percent of survey respondents believed that the creation of the new rule provision at WAC 460-24A-125 regarding proxy voting would result in increased expenses. The average cost increase per employee for each survey respondent included $106.69 per

employee for professional services, $32.09 per employee in labor, and $43.47 per employee in increased administrative costs. Of the ten percent who stated that the new rule would increase their costs, the average cost increase per employee was $1,437.48 in professional services, $100 in supplies, $746.94 in labor, and $776.54 in increased administrative costs.

The new rule will require investment advisers who exercise voting authority for their client's securities to adopt written policies and procedures to ensure that voting authority is exercised in the best interests of the adviser's client. In addition, advisers who exercise voting authority for their client's securities must provide disclosure information to clients as specified in the rule. Advisers who do not exercise voting authority will *not* be required to adopt policies or disclosure documents. However, those that do exercise voting authority may incur costs of developing policies, procedures, and disclosure documents. Advisers may choose to use the professional services of attorneys or consultants to complete these tasks.

WAC 460-24A-130 Contents of advisory contract.

The survey results indicated that twenty-four percent of survey respondents believed that the creation of the new rule provision at WAC 460-24A-130 concerning the contents of the advisory contract would cause an increase in expenses. The average cost increase according to the survey results includes $120.78 per employee in professional services. Advisers may choose to use the professional services of an attorney or consultant to ensure that their advisory contracts comply with the rule. However, many of the requirements for advisory contracts in proposed WAC 460-24A-130 represent existing requirements under chapter 21.20 RCW, or requirements under existing rules in WAC 460-24A-200 which are being moved to this new section.

WAC 460-24A-200 Books and records.

The survey results indicated that twenty-five percent of the survey respondents believed that the revisions to the books and records rule at WAC 460-24A-200 would increase costs. These expenses would include an average of $433.80 per employee for professional services, $212.75 per employee for labor, and $282.62 per employee for increased administrative costs. Of the twenty-five percent of survey respondents who indicated the rule changes would increase their costs, the average increased costs per employee were $2,232.25 for professional services, $481.04 for equipment, $377.62 for supplies, $1,695.16 for labor, and $1,837.01 for increased administrative costs.

The proposed changes to the books and records rule will increase the number of records that investment advisers must keep, which may increase costs. Adviser[s] may incur expenses related to recordkeeping, such as costs for records retention and office supplies. Advisers may also incur expenses in developing new recordkeeping procedures and practices, such as the requirement to maintain written information regarding the securities recommended by the investment adviser. There may also be expenses in developing a business continuity plan. However, it should be noted that many investment advisers already maintain the records being added to the rule.

Whether Compliance with the Proposed Rule Will Cause Businesses to Lose Sales or Revenue: The proposed rules may result in investment advisers losing sales or revenue. The securities division's survey revealed that ten percent of respondents believed that compliance with the rule changes would result in lost sales or revenue. In contrast, ninety percent of respondents did not believe the rule changes would cause lost sales or revenue. The ten percent who believed the changes would lead to lost sale[s] or revenue estimated they would lose $8,544 in revenue per employee.

The survey requested a free form answer on what specific provision in the proposed rules would cause the lost sales or revenue. Most of the answers did not address what would cause lost sales or revenue, but instead focused on the increased costs the rule amendments would create. However, at least two survey respondents mentioned that increased time spent on compliance matters would leave less time for working with clients, and might cause an investment adviser to engage fewer clients. Additionally, revenue may be lost if advisers limit the type of services they provide because of the cost of compliance.

An Estimate of the Number of Jobs That Will Be Created or Lost as a Result of Compliance with the Proposed Rule: The securities division surveyed its state registered investment advisers and federal notice filed investment advisers to determine whether the proposed rule making could result in the addition or elimination [of] any jobs.

Approximately three percent of survey takers anticipated that the rule making would cause them to eliminate jobs. These three percent estimated that they would eliminate one to four jobs. Approximately ninety-seven percent of survey takers did not anticipate that they would need to eliminate any jobs.

Approximately four percent of respondents indicated that the rule changes would cause them to add jobs. These four percent estimated they would add between .5 to two jobs. Approximately ninety-six percent of survey takers did not anticipate adding any jobs.

Based on the survey results, the securities division estimates that the average investment adviser will neither add nor eliminate any jobs as a result of the rule amendments.

A Comparison of Compliance Costs for the Small Business Segment and the Large Business Segment of the Affected Industries, and Whether the Impact on Small Business is Disproportionate: RCW 19.85.040 requires that the securities division determine whether compliance with the proposed rules will have a disproportionate impact on small businesses by comparing the cost of compliance for small business with the costs of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules.

The securities division categorized each survey response based on whether it came from a small business or whether it represented the ten percent of businesses that were the largest businesses that responded. The two categories were then compared to each other. The survey results tended to show that the increased costs per employee of small businesses were disproportionately greater than the increased costs per employee of the largest businesses.

The results may be impacted by the fact that all state registered investment advisers who responded to the survey qualified as small businesses. Many of these businesses have only one employee. The largest ten percent of businesses included federal notice filed investment advisers. The largest advisers, having more employees and typically offering more complicated products and services, may already have compliance policies and procedures, proxy voting disclosures, business continuity plans, and advisory contracts that meet the requirements of the proposed rule amendments. Consequently, they may see less of an increase in the costs for professional services, labor, and administrative costs than smaller advisers.

In order to determine whether the regulatory difference between state and federal notice filed advisers was the cause of the disproportionate expenses, the securities division also compared the increased costs of all state registered investment advisers (all small businesses) with the costs of the largest ten percent of state registered advisers. However, the results still showed that costs per employee of small businesses were disproportionately greater than the increased costs per employee of the largest businesses. This may be because the largest state advisers have more employees and therefore more internal systems, and may have been in business longer than the smallest businesses. In any event, all advisers, large and small, provide investment advice to members of the public. It is imperative that investment advisers be well regulated in order to increase confidence in the markets and to protect the public from financial fraud.

The following chart compares the average cost increase associated with the proposed changes to the rule provision for both the largest ten percent of businesses required to comply and small businesses. Small businesses are defined as fifty or fewer employees. The largest ten percent of business[es] were likewise determined by the number of employees.

Average Cost Increase—Comparison of Small Business and Largest 10% of Businesses					
Rule Provision	**Prof'l. Services**	**Equipment**	**Supplies**	**Labor**	**Admin.**
WAC 460-24A-005					
Small Businesses	$ 397.41	$ 8.12	$ 19.84	$ 224.19	$ 211.65
Largest 10%	$ 0.37	$ -	$ 0.10	$ -	$ 0.05
WAC 460-24A-010					
Small Businesses	$ 16.75	$ -	$ 0.38	$ 5.35	$ 6.38
Largest 10%	$ 0.52	$ -	$ -	$ 0.26	$ -
Plain English Updates					
Small Businesses	$ 112.45	$ 0.19	$ 2.00	$ 40.95	$ 3.71
Largest 10%	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-035					
Small Businesses	$ 27.68	$ -	$ 0.40	$ 7.91	$ 20.73
Largest 10%	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-040					
Small Businesses	$ 1.08	$ -	$ 0.99	$ 0.87	$ 0.79
Largest 10%	$ -	$ -	$ -	$ -	$ 6.90
WAC 460-24A-047					
Small Businesses	$ 28.65	$ 0.20	$ 0.29	$ 9.85	$ 16.60
Largest 10%	$ -	$ -	$ -	$ -	$ 0.10
WAC 460-24A-050					
Small Businesses	$ 128.14		$ 0.41	$ 9.97	$ 112.44
Largest 10%	$ 4.28		$ 0.43	$ 0.61	$ 1.83
WAC 460-24A-059					
Small Businesses	$ 3.97	$ -	$ -	$ 3.97	$ -
Largest 10%	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-060					
Small Businesses	$ 338.76	$ 1.34	$ 0.01	$ 89.59	$ 196.51
Largest 10%	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-070					
Small Businesses	$ -	$ -	$ -	$ -	$ -
Largest 10%	$ -	$ -	$ -	$ -	$ -

Average Cost Increase—Comparison of Small Business and Largest 10% of Businesses					
Rule Provision	**Prof'l. Services**	**Equipment**	**Supplies**	**Labor**	**Admin.**
WAC 460-24A-071					
Small Businesses	$ 143.45		$ 0.01	$ 0.06	$ 0.56
Largest 10%	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-072					
Small Businesses	$ -	$ -	$ -	$ -	$ -
Largest 10%	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-080					
Small Businesses	$ 29.94	$ 0.10	$ 0.10	$ 16.38	$ 9.33
Largest 10%	$ 20.86	$ -	$ 0.11	$ 10.03	$ 10.71
WAC 460-24A-100					
Small Businesses	$ 79.83	$ -	$ 0.61	$ 44.50	$ 37.77
Largest 10%	$ 1.18	$ -	$ 0.24	$ -	$ 0.94
WAC 460-24A-105					
Small Businesses	$ 281.56	$ 10.02	$ 13.14	$ 83.61	$ 131.30
Largest 10%	$ 2.38	$ -	$ -	$ -	$ 2.36
WAC 460-24A-106					
Small Businesses	$ 397.62	$ 9.41	$ 34.56	$ 147.88	$ 206.70
Largest 10%	$ 3.21	$ -	$ -	$ -	$ 3.21
WAC 460-24A-107					
Small Businesses	$ 189.00	$ 1.72	$ 11.42	$ 67.89	$ 122.19
Largest 10%	$ 4.26	$ -	$ -	$ -	$ 2.65
WAC 460-24A-108					
Small Businesses	$ 17.49	$ -	$ -	$ 8.64	$ 6.80
Largest 10%	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-109					
Small Businesses	$ -	$ -	$ -	$ -	$ -
Largest 10%	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-120					
Small Businesses	$ 181.57	$ 2.41	$ 3.31	$ 72.85	$ 107.59
Largest 10%	$ 2.95	$ -	$ -	$ -	$ 2.36
WAC 460-24A-125					
Small Businesses	$ 117.96		$ 0.87	$ 35.57	$ 46.79
Largest 10%	$ 2.36	$ -	$ -	$ -	$ 2.36
WAC 460-24A-130					
Small Businesses	$ 133.91	$ 1.08	$ 4.29	$ 92.66	$ 65.28
Largest 10%	$ 2.90	$ -	$ -	$ 0.68	$ 2.18
WAC 460-24A-140					
Small Businesses	$ 4.35	$ -	$ -	$ 4.35	$ -
Largest 10%	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-145					
Small Businesses	$ 28.39	$ 0.75	$ 4.69	$ 14.65	$ 11.59
Largest 10%	$ 2.45	$ -	$ -	$ -	$ 2.45
WAC 460-24A-150					
Small Businesses	$ 8.47	$ -	$ -	$ -	$ 1.69
Largest 10%	$ 1.84	$ -	$ -	$ -	$ 1.22

Average Cost Increase—Comparison of Small Business and Largest 10% of Businesses					
Rule Provision	**Prof'l. Services**	**Equipment**	**Supplies**	**Labor**	**Admin.**
WAC 460-24A-160					
Small Businesses	$ 2.99	$ -	$ 0.53	$ 2.39	$ 0.07
Largest 10%	$ -	$ 21.61	$ -	$ 10.80	$ 10.80
WAC 460-24A-170					
Small Businesses	$ 18.58	$ -	$ -	$ 13.27	$ 7.08
Largest 10%	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-200					
Small Businesses	$ 478.34	$ 19.33	$ 13.49	$ 234.60	$ 311.64
Largest 10%	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-205					
Small Businesses	$ 47.88	$ 0.33	$ 2.11	$ 12.18	$ 21.26
Largest 10%	$ 3.05	$ -	$ 0.61	$ 1.22	$ 1.83
WAC 460-24A-220					
Small Businesses	$ 115.57	$ -	$ 0.37	$ 65.44	$ 65.62
Largest 10%	$ -	$ -	$ -	$ -	$ -
WAC 460-24A-058					
Small Businesses	$ 1.16	$ -	$ -	$ 1.16	$ -
Largest 10%	$ -	$ -	$ -	$ -	$ -

Comparison of Lost Sales or Revenue: The largest ten percent of businesses indicated in their survey responses that they would lose an average of $8.33 per employee in lost revenue, with only one larger business expecting to lose revenue. Small businesses estimated that they would lose an average of $876.41 in revenue per employee, with twenty-two small businesses reporting that they expected to lose revenue because of the rule changes.

Comparison of Addition or Elimination of Jobs: Approximately four percent of respondents indicated that the rule changes would cause them to add jobs. These represented nine small businesses plus one business that was in the ten percent of the largest businesses. Approximately three percent of respondents indicated that the rule changes would cause them to eliminate jobs. These responses represented eight small businesses. None of the ten percent of the largest business[es] indicated that jobs would be eliminated because of the rule changes.

Steps Taken by the Department Under RCW 19.85.030(2) to Reduce the Costs of the Proposed Rule on Small Businesses, or Reasonable Justification for Not Doing So, Addressing the Specified Mitigation Steps.

Investor Protection Purpose: In drafting the rule amendments, the securities division attempted to balance the business concerns of registered investment advisers with the securities division's mission to protect the investing public and to promote confidence in the capital markets. While the proposed rule changes may increase costs to licensees, the securities division believes the costs will be outweighed by the increased protection for investors. In addition, certain changes to the rules are being made in order to conform with changes to federal law and to create uniformity with other states by adopting provisions from updated NASAA model rules.

As a result of feedback received from affected businesses, the securities division made certain modifications to its initial draft of the rule amendments in order to reduce the cost of compliance for small businesses. These changes are detailed below. The securities division does not believe that it can reduce costs further and still accomplish the investor protection purpose of the rule making.

Reducing, Modifying, or Eliminating Substantive Regulatory Requirements: The securities division received several comments in its economic impact survey which indicated that the change in the definition of custody, which shortened the amount of time an adviser could hold inadvertently received funds, would be burdensome and increase costs. As a result of the survey, the securities division changed the custody definition at WAC 460-24A-005 to allow for the return of inadvertently received funds within three business days rather than one. The securities division also changed the existing rule to allow advisers to forward checks drawn by clients and made payable to third parties within three business days of receipt (rather than the current twenty-four hours). These changes will provide relief to advisers who were concerned that one business day was not sufficient time to identify client funds and either forward them to third parties or return them as appropriate to avoid being deemed to have custody.

The securities division also received several comments suggesting that the requirement for compliance policies and procedures in new section WAC 460-24A-120 was burdensome and unnecessary for advisers who are solo practitioners. In response, the securities division made amendments to the draft rule to specify that the requirement to implement compliance policies and procedures applies only to advisers who have more than one employee.

In addition, the securities division made changes to the financial reporting requirements in WAC 460-24A-060, the

compliance policies and procedures requirement in WAC 460-24A-120, the proxy voting provisions in WAC 460-24A-125, the advisory contract requirements in WAC 460-24A-130, and the performance compensation provisions in WAC 460-24A-150 to clarify that the rules apply only to investment advisers who are registered or required to be registered under the Securities Act. Thus, certain investment advisers who are exempt from registration, such a [as] private fund advisers under new section WAC 460-24A-071 and venture capital fund advisers under new section WAC 460-24A-072, will not be required to comply with these provisions.

To further simplify its rules and to reduce expenses for investment advisers, the securities division removed three new subsections that had been added as unethical business practices in WAC 460-24A-220. The securities division had added as unethical business practices providing investment advice without having implemented compliance policies and procedures in violation of WAC 460-24A-120; exercising voting authority with respect to client securities in violation of WAC 460-24A-125; and failing to keep a written business continuity plan as unethical business practices. After reviewing survey results which indicated that these additions to the unethical practices rule section may increase expenses, the securities division decided to remove these three additions to WAC 460-24A-220 because they are not necessary additions. However, it is important to note that violation of one of [the] rules specified above may still constitute an unethical business practice even if it is not specifically listed in WAC 460-24A-220.

Simplifying, Reducing or Eliminating Recordkeeping and Reporting Requirements: The securities division received several comments regarding the proposed changes to WAC 460-24A-060. The draft amendments to WAC 460-24A-060 require that investment advisers with custody of client funds file an annual audited balance sheet. The costs of obtaining an audited balance sheet each year may be significant to a small business owner. However, requiring an audited balance sheet will provide increased protections for the clients whose funds are in the custody of an investment adviser.

To balance these concerns, the securities division decided to relax the audited balance sheet requirement for certain advisers. The securities division revised WAC 460-24A-106 to state that advisers who have custody as defined in WAC 460-24A-005(1) solely because they deduct fees are not required to file an audited balance sheet provided the adviser otherwise meets the requirements of WAC 460-24A-105, 460-24A-060(3), and 460-24A-106(1). This change will reduce the costs of obtaining an audited balance sheet for advisers who have custody solely because they deduct fees.

In addition, the securities division revised WAC 460-24A-107 to state that advisers who have custody as defined in WAC 460-24A-005 (1)(a)(iii) because they manage a pooled investment vehicle, and who provide audited financial statements of the pooled investment vehicle to clients pursuant to WAC 460-24A-107 (1)(b), are not required to file an audited balance sheet for the investment adviser provided they otherwise comply with WAC 460-24A-105, 460-24A-060(3), and 460-24A-107 (1)(b) and (2). This change will reduce the cost [of] obtaining an audited balance sheet for advisers to pooled funds where the pooled funds are subject to annual audits.

Delaying Compliance Timetables: Investment advisers will be allowed adequate time to adjust to the rule changes through processes already in place. Through the exam and deficiency letter process, the securities division will allow reasonable time for investment advisers to fix any deficiencies related to the new rules that the exam staff identify during examinations of investment advisers that occur in the period immediately following enactment of the rules. The securities division will also continue to provide technical assistance visits to newly registered investment advisers to provide feedback on recordkeeping and other compliance matters.

Other Mitigation Techniques: The securities division will develop a frequently asked questions (FAQ) publication for distribution when the amended rules are adopted. The securities division intends to provide guidance through the FAQ to explain what is required for compliance with the rule amendments. The securities division has determined that in many cases, the nature of the compliance envisioned by the securities division is less burdensome than that imagined by the investment advisers taking the small business economic impact survey.

The securities division intends to address the following topics in the FAQ:

- The securities division will clarify that none of the rule changes require that investment advisers revise their contracts or other documents in "plain English" style. The securities division merely revised the text of its rules in "plain English" so that they would be easier to understand.
- The securities division will provide guidance on the annual review of compliance policies and procedures required by WAC 460-24A-120. The text of this rule provision is adopted from federal Rule 206 (4)-7. The purpose of the review is to ensure that policies are reasonably up to date, for the protection of both the investment adviser and its clients. The review need not be done by outside professional services, but may be conducted by the investment adviser on an as-needed basis when there are changes to the rules and laws affecting investment advisers.
- The securities division will clarify that the proxy voting and electronic delivery provisions required for advisory contracts by WAC 460-24A-130 must be added *only if* the adviser intends to exercise voting authority over client securities or if the adviser intends to deliver documents by electronic means. Advisers not engaging in these activities do not need to add these provisions to their advisory contracts.
- The securities division will provide guidance on the business continuity plan required under WAC 460-24A-200 (1)(y). The business continuity plan should provide instructions in the event of an emergency or the incapacitation of the investment adviser. For instance, the plan should describe what will happen to client funds over which the investment adviser has custody or exercises discretion.

The plan need not be more than one page in length and should not require the use of professional services to prepare.

- The securities division will provide guidance regarding the type of written information regarding securities that the adviser should maintain to comply with WAC 460-24A-200 (1)(s). The type of written information will be different depending on the nature of the security recommended. For instance, a publicly traded security for which research information is widely available would require less documentation than an obscure privately offered security. For a privately offered security, the adviser generally must conduct and document more extensive research and analysis in order to determine the suitability of the security for a client. This requirement for written documentation protects both investors and the investment adviser.

In addition to the assistance provided in the anticipated FAQ, the securities division may conduct informational sessions for investment advisers to provide an overview of the rule changes.

How the Department Will Involve Small Business in Rule Development: Since the beginning of the rule-making process in 2010, the securities division has involved its registered investment advisers and interested persons in the rule-making process.

On March 19, 2010, the securities division filed a pre-proposal statement of inquiry (CR-101) concerning the possible amendment of the investment adviser rules. The securities division distributed the CR-101 notice to its interested persons list for securities registration matters and to all state registered advisers. This group of recipients included many small businesses and those that advise small businesses.

The CR-101 notice invited interested persons to participate in the rule-making process by submitting comments to the securities division. The securities division took the feedback received into account when preparing the initial draft of the rule amendments. Once a draft was prepared, it was distributed to the interested persons list on August 13, 2012.

The securities division next prepared a survey to determine the economic impact of the proposed rule making on investment advisers. The survey, along with a copy of the draft rule amendments, was sent to all state registered investment advisers and a representative sample of federal notice filed investment advisers. Based on the results received, the securities division made changes to its proposed draft as detailed above. The securities division will continue to seek the feedback of interested parties as the rule-making process continues.

A List of the Industries That Will Be Required to Comply with the Rule: Investment advisers doing business in Washington will be required to comply with the amended rules.

A copy of the statement may be obtained by contacting Jill Vallely, DFI, securities division, P.O. Box 9033, Olympia, WA 98507-9033, phone (360) 902-8760, fax (360) 704-7035, e-mail jill.vallely@dfi.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. DFI is not one of the agencies listed in RCW 34.05.328.

March 21, 2013
Scott Jarvis
Director

AMENDATORY SECTION (Amending WSR 08-18-033, filed 8/27/08, effective 9/27/08)

WAC 460-24A-005 Definitions. For purposes of this chapter:

(1) **"Custody"** means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them or the ability to appropriate them.

(a) "Custody" includes:

(i) Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in any case within three business days of receiving them;

(ii) Any arrangement (including a general power of attorney) under which an investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon an investment adviser's instruction to the custodian; and

(iii) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives an investment adviser or its supervised person legal ownership of or access to client funds or securities.

(b) Receipt of checks drawn by clients and made payable to unrelated third parties will not meet the definition of custody if forwarded to the third party within ((~~twenty-four hours~~)) three business days of receipt and the adviser maintains a ledger or other listing of all securities or funds held or obtained inadvertently((~~, including the following information:~~

~~(i) Issuer;~~

~~(ii) Type of security and series;~~

~~(iii) Date of issue;~~

~~(iv) For debt instruments, the denomination, interest rate, and maturity date;~~

~~(v) Certificate number, including alphabetical prefix or suffix;~~

~~(vi) Name in which registered;~~

~~(vii) Date given to the adviser;~~

~~(viii) Date sent to client or sender;~~

~~(ix) Form of delivery to client or sender, or copy of the form of delivery to client or sender; and~~

~~(x) Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return~~)) as set forth in WAC 460-24A-200.

(2) **"Independent party"** means a person who:

(a) Is engaged by an investment adviser to act as a gatekeeper for the payment of fees, expenses, and capital withdrawals from a pooled investment;

(b) Does not control and is not controlled by and is not under common control with the investment adviser; ((~~and~~))

(c) Does not have, and has not had within the past two years, a material business relationship, including acting as an

independent representative on behalf of a client of the investment adviser, with the investment adviser;

(d) Shall not negotiate or agree to have material business relations with an investment adviser, or relationships with entities under common control with an investment adviser, for a period of two years after serving as the person engaged in an independent party agreement; and

(e) Is required to act in the best interest of the limited partners, members, or other beneficial owners.

(3) **"Independent representative"** means a person who:

(a) Acts as an agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners or members, or other beneficial owners;

(b) Does not control, is not controlled by, and is not under common control with the investment adviser;

(c) Does not have, and has not had within the past two years, a material business relationship, including acting as an independent party, with the investment adviser.

(4) **"Qualified custodian"** means the following independent institutions or entities:

(a) A bank as defined in section 202 (a)(2) of the Advisers Act, 15 U.S.C. 80b-2 (a)(2), or a savings association as defined in section 3 (b)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1813 (b)(1), that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act, 12 U.S.C. 1811;

(b) A broker-dealer registered in this state and under section 15 (b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78o (b)(1), holding the client assets in customer accounts;

(c) A futures commission merchant registered under section 4f(a) of the Commodity Exchange Act, 7 U.S.C. 6f(a), holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon;

(d) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets; and

(e) The transfer agent for an open-end company as defined in section 5 (a)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-5 (a)(1), only with respect to shares of the open-end company.

(5) **"Independent certified public accountant"** means a certified public accountant that meets the standards of independence described in rule 2-01 (b) and (c) of Regulation S-X, 17 C.F.R. 210.2-01 (b) and (c).

(6) **"Related person"** means any person, directly or indirectly, controlling or controlled by the investment adviser, and any person that is under common control with the investment adviser.

(7) **"Control"** means the power, directly or indirectly, to direct the management or policies of a person whether through ownership of securities, by contract, or otherwise. The following persons are presumed to have control:

(a) Each of the investment adviser's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions); and

(b) A person who:

(i) Directly or indirectly has the right to vote twenty-five percent or more of a class of the voting securities of a corporation or limited liability company;

(ii) Has the power to sell or direct the sale of twenty-five percent or more of a class of the voting securities of a corporation or limited liability company;

(iii) Has the right to receive, upon dissolution, or that has contributed, twenty-five percent or more of the capital of a partnership or limited liability company; or

(iv) Is the manager of a limited liability company or the trustee or managing agent of a trust.

(8) **"Private fund adviser"** means an investment adviser who provides advice solely to one or more qualifying private funds.

(9) **"Qualifying private fund"** means a private fund that meets the definition of a qualifying private fund in Securities and Exchange Commission Rule 203(m)-1, 17 C.F.R. 275.203(m)-1, other than a private fund that qualifies for the exclusion from the definition of "investment company" provided in section 3 (c)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-3 (c)(1).

(10) **"Discretionary authority"** means the authority, directly or indirectly, to:

(a) Determine what securities or other property shall be purchased or sold by or on behalf of a client;

(b) Make decisions as to what securities or other property shall be purchased or sold by or for the benefit of a client even though some other person may have responsibility for such investment decisions; or

(c) Make decisions as to what investment advisers to retain on behalf of a client.

(11) **"FINRA"** means the Financial Industry Regulatory Authority, Inc., the self-regulatory organization for broker-dealers and broker-dealer representatives that is registered as a national securities association with the Securities and Exchange Commission under Section 15A of the Securities Exchange Act of 1934, 15 U.S.C. § 78o.

(12) **"Central Registration Depository"** or **"CRD"** means the electronic filing system operated by FINRA for the registration of broker-dealers and broker-dealer representatives.

(13) **"Investment Adviser Registration Depository"** or **"IARD"** means the electronic filing system operated by FINRA for the registration of investment advisers and investment adviser representatives and submission of filings by exempt reporting advisers.

AMENDATORY SECTION (Amending Order 304, filed 2/28/75, effective 4/1/75)

WAC 460-24A-010 ((~~Investment advisers—Where rules apply.~~)) Application of rules to out-of-state investment advisers. If you are an investment adviser or investment adviser representative with your principal office and

place of business outside the state of Washington, these rules apply only to that part of ((~~the investment advisers'~~)) your business within the state of Washington.

AMENDATORY SECTION (Amending WSR 12-10-051, filed 4/30/12, effective 5/31/12)

WAC 460-24A-020 Investment adviser representatives employed by federal covered advisers. If you are an individual employed by or associated with a federal covered adviser ((~~is~~)) you are an "investment adviser representative," ((~~pursuant to~~)) as defined under RCW 21.20.005, if ((~~the representative has~~)) you have a "place of business" in this state, as that term is defined under section 203A of the Investment Advisers Act of 1940, and:

(1) ((~~Is~~)) You are an "investment adviser representative" ((~~pursuant to~~)) as that term is defined in rules or regulations promulgated under the Investment Advisers Act of 1940 by the U.S. Securities and Exchange Commission; or

(2) You solicit((~~s~~)), offer((~~s~~)), or negotiate((~~s~~)) for the sale of or sell((~~s~~)) investment advisory services on behalf of a federal covered adviser, but ((~~is~~)) are not a "supervised person" as that term is defined under the Investment Advisers Act of 1940.

AMENDATORY SECTION (Amending Order 304, filed 2/28/75, effective 4/1/75)

WAC 460-24A-030 Use of the term "investment counsel((~~.~~))" is prohibited. ((~~No~~)) If you are an investment adviser or investment adviser representative, you shall not use the title "investment counsel" in the conduct of ((~~his or its~~)) your business nor represent that ((~~he or it is~~)) you are an "investment counsel" nor use the term "investment counsel" as descriptive of ((~~his or its~~)) your business where such use is prohibited under the provisions of the Federal Investment Advisers Act of 1940, as amended.

NEW SECTION

WAC 460-24A-035 Definition of "client" of an investment adviser. (1) **General.** You may deem the following to be a single client for purposes of RCW 21.20.040 (3):

(a) A natural person; and

(i) Any minor child of the natural person;

(ii) Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;

(iii) All accounts of which the natural person and/or the persons referred to in (a) of this subsection are the only primary beneficiaries; and

(iv) All trusts of which the natural person and/or the persons referred to in (a) of this subsection are the only primary beneficiaries;

(b)(i) A corporation, general partnership, limited partnership, limited liability company, trust (other than a trust referred to in subsection (1)(a)(iv) of this section), or other legal organization (any of which are referred to hereinafter as a "legal organization") to which you provide investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries (any of which are referred to hereinafter as an "owner"); and

(ii) Two or more legal organizations referred to in subsection (1)(b)(i) of this section that have identical owners.

(2) **Special rules.** For purposes of this section:

(a) You must count an owner as a client if you provide investment advisory services to the owner separate and apart from the investment advisory services you provide to the legal organization; provided, however, that the determination that an owner is a client will not affect the applicability of this section with regard to any other owner;

(b) You are not required to count an owner as a client solely because you, on behalf of the legal organization, offer, promote, or sell interests in the legal organization to the owner, or report periodically to the owners as a group solely with respect to the performance of or plans for the legal organization's assets or similar matters;

(c) A limited partnership or limited liability company is a client of any general partner, managing member or other person acting as investment adviser to the partnership or limited liability company;

(d) You are not required to count as a client any person for whom you provide investment advisory services without compensation;

(e) If you have your principal office and place of business outside the United States, you are not required to count clients that are not United States residents, but if your principal office and place of business is in the United States, you must count all clients;

(f) You may not rely on subsection (1)(b)(i) of this section with respect to any company that would be an investment company under section 3(a) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(a), but for the exception from that definition by either section 3 (c)(1) or 3 (c)(7) of such act, 15 U.S.C. 80a-3 (c)(1) or (7); and

(g) For purposes of (e) of this subsection, a client who is an owner of a private fund is a resident of the place at which the client resides at the time of the client's investment in the fund.

AMENDATORY SECTION (Amending WSR 00-01-001, filed 12/1/99, effective 1/1/00)

WAC 460-24A-040 Use of certain terms deemed similar to "financial planner" or "investment counselor." (1) For the purposes of RCW 21.20.040((~~(3)~~)) (4), use of any term, or abbreviation for a term, including the word "financial planner" or the word "investment counselor" is considered the same as the use of either of those terms alone.

(2) For the purposes of RCW 21.20.040((~~(3)~~)) (4), terms that are deemed similar to "financial planner" and "investment counselor" include, but are not limited to, the following:

(a) Financial consultant;

(b) Investment consultant;

(c) Money manager;

(d) Investment manager;

(e) Investment planner;

(f) Chartered financial consultant or its abbreviation ChFC; or

(g) The abbreviation CFP®.

AMENDATORY SECTION (Amending WSR 12-10-051, filed 4/30/12, effective 5/31/12)

WAC 460-24A-045 Holding out as a financial planner. ((~~A person using~~)) If you use a term deemed similar to "financial planner" or "investment counselor" under WAC 460-24A-040(2), you will not be considered to be holding ((~~himself~~)) yourself out as a financial planner for purposes of RCW 21.20.005 and 21.20.040 under the following circumstances:

(1) ((~~The person is~~)) You are not in the business of providing advice relating to the purchase or sale of securities, and would not, but for ((~~his~~)) your use of such a term, be an investment adviser required to register pursuant to RCW 21.20.040; and

(2) ((~~The person does~~)) You do not directly or indirectly receive a fee for providing investment advice. Receipt of any portion of a "wrap fee," that is, a fee for some combination of brokerage and investment advisory services, constitutes receipt of a fee for providing investment advice for the purpose of this section; and

(3) ((~~The person~~)) You deliver((~~s~~)) to every customer, at least forty-eight hours before accepting any compensation, including commissions from the sale of any investment product, a written disclosure including the following information:

(a) ((~~The person is~~)) You are not registered as an investment adviser or investment adviser ((~~salesperson~~)) representative in the state of Washington;

(b) ((~~The person is~~)) You are not authorized to provide financial planning or investment advisory services and ((~~does~~)) do not provide such services; and

(c) A brief description ((~~the person's~~)) of your business which description ((~~should~~)) shall include a statement of the kind of products offered or services provided (e.g., ((~~the person is~~)) you are in the business of selling securities and insurance products) and of the basis on which ((~~the person is~~)) you are compensated for the products sold or services provided; and

(4) ((~~The person has~~)) You have each customer to whom a disclosure described in subsection (3) of this section is given sign a written dated acknowledgment of receipt of the disclosure; and

(5) ((~~The person shall~~)) You retain the executed acknowledgments of receipt required by subsection (4) of this section and of the disclosure given for so long as ((~~the person~~)) you continue((~~s~~)) to receive compensation from such customers, but in no case for less than three years from date of execution of the acknowledgment; and

(6) If ((~~the person~~)) you received compensation from the customer on more than one occasion, ((~~the person~~)) you need give the customer the disclosure described in subsection (3) of this section only on the first occasion unless the information in the disclosure becomes inaccurate, in which case ((~~the person~~)) you must give the customer updated disclosure before receiving further compensation from the customer.

AMENDATORY SECTION (Amending WSR 01-16-125, filed 7/31/01, effective 10/24/01)

WAC 460-24A-047 Electronic filing with designated entity. (1) Designation. Pursuant to RCW 21.20.050, the director designates the Investment Adviser Registration Depository (IARD) operated by ((~~the National Association of Securities Dealers (IARD)~~)) FINRA to receive and store filings and collect related fees from investment advisers, federal covered advisers, and investment adviser representatives on behalf of the director.

(2) Use of IARD. Unless otherwise provided, all investment adviser, federal covered adviser, and investment adviser representative applications, amendments, reports, notices, related filings, and fees required to be filed with the director pursuant to the rules promulgated under this chapter, shall be filed electronically with and transmitted to IARD. The following additional conditions relate to such electronic filings:

(a) Electronic signature. When a signature or signatures are required by the particular instructions of any filing to be made through IARD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to ((~~Web~~)) IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.

(b) When filed. Solely for purposes of a filing made through IARD, a document is considered filed with the director when all fees are received and the filing is accepted by IARD on behalf of the state.

(3) Electronic filing. Notwithstanding subsection (2) of this section, the electronic filing of any particular document and the collection of related processing fees shall not be required until such time as IARD provides for receipt of such filings and fees and thirty days' notice is provided by the director. Any documents required to be filed with the director that are not permitted to be filed with or cannot be accepted electronically by IARD shall be filed ((~~in paper~~)) directly with the director.

(4) Hardship exemptions. Notwithstanding subsection (2) of this section, electronic filing is not required under the following circumstances:

(a) Temporary hardship exemption.

(i) Investment advisers registered or required to be registered under RCW 21.20.040, who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD, may request a temporary hardship exemption from the requirements to file electronically.

(ii) To request a temporary hardship exemption, the investment adviser must:

(A) File Form ADV-H in paper format with the appropriate regulatory authority in the state where the investment adviser's principal place of business is located, no later than one business day after the filing, that is the subject of the Form ADV-H, was due. If the state where the investment adviser's principal place of business is located has not mandated the use of IARD, the investment adviser should file the Form ADV-H with the appropriate regulatory authority in the first state that mandates the use of IARD by the investment adviser; and

(B) Submit the filing that is the subject of the Form ADV-H in electronic format to IARD no later than seven business days after the filing was due.

(iii) Effective date((—)) - Upon filing. The temporary hardship exemption will be deemed effective by the director upon receipt of the complete Form ADV-H by appropriate regulatory authority noted in (a)(ii)(A) of this subsection. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the director.

(b) Continuing hardship exemption.

(i) Criteria for exemption. A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of this section are prohibitively burdensome.

(ii) To apply for a continuing hardship exemption, the investment adviser must:

(A) File Form ADV-H in paper format with the director at least twenty business days before a filing is due; and

(B) If a filing is due to more than one state, the Form ADV-H must be filed with the appropriate regulatory authority in the state where the investment adviser's principal place of business is located. If the state where the investment adviser's principal place of business is located has not mandated the use of IARD, the investment adviser should file the Form ADV-H with the appropriate regulatory authority in the first state that mandates the use of IARD by the investment adviser. Any applications received by the director will be granted or denied within ten business days after the filing of Form ADV-H.

(iii) Effective date((—)) - Upon approval. The exemption is effective upon approval by the director. The time period of the exemption may be no longer than one year after the date on which the Form ADV-H is filed. If the director approves the application, the investment adviser must, no later than five business days after the exemption approval date, submit filings in paper format (along with the appropriate processing fees) for the period of time for which the exemption is granted.

(c) Recognition of exemption. The decision to grant or deny a request for a hardship exemption will be made by the appropriate regulatory authority in the state where the investment adviser's principal place of business is located. If the state where the investment adviser's principal place of business is located has not mandated the use of IARD, the decision to grant or deny a request for a hardship exemption will be made by appropriate regulatory authority in the first state that mandates the use of IARD by the investment adviser. The decision will be followed by the director if the investment adviser is registered in this state.

AMENDATORY SECTION (Amending WSR 01-16-125, filed 7/31/01, effective 10/24/01)

WAC 460-24A-050 ((~~Investment adviser and investment adviser representative~~)) Registration and examination((~~s~~)) requirements. (1) **Examination requirements.** ((~~A person~~)) If you are applying to be registered as an investment adviser or investment adviser representative under RCW 21.20.040, you shall provide the director with proof that ((~~he or she has~~)) you have obtained a passing score on ((~~one of the following examinations~~)):

(a) The Uniform Investment Adviser Law Examination (Series 65 examination); or

(b) The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).

(2) **((~~Grandfathering.~~)) Exceptions from examination requirements.**

(a) ((~~Any individual who is~~)) If you were registered as an investment adviser or investment adviser representative in any jurisdiction in the United States on ((~~the effective date of this amended rule~~)) January 1, 2000, you shall not be required to satisfy the examination requirements for initial or continued registration, provided that the director may require additional examinations ((~~for any individual~~)) if you are found to have violated the Securities Act of Washington, Chapter 21.20 RCW, or the Uniform Securities Act.

(b) ((~~An individual who has not been registered in any jurisdiction for a period of two years shall be required to comply with the examination requirements of subsection (1).~~)) Any person who has been registered as an investment adviser or investment adviser representative in any state requiring the licensing, registration, or qualification of investment advisers or investment adviser representatives within the two-year period immediately preceding the date of filing of an application shall not be required to comply with the examination requirement set forth in subsection (1) of this section provided that the person previously met the examination requirement in subsection (1) of this section.

(c) An applicant who has taken and passed the Uniform Investment Adviser State Law Examination (Series 65 examination) within two years prior to the date the application is filed with the director shall not be required to take and pass the Uniform Investment Adviser State Law Examination again.

(d) An applicant who is an agent for a broker-dealer/investment adviser and who is not required by the agent's home jurisdiction to make a separate filing on CRD as an investment adviser representative but who has previously met the examination requirement in subsection (1) of this section necessary to provide advisory services on behalf of the broker-dealer/investment adviser, shall not be required to take and pass the Uniform Investment Adviser State Law Examination (Series 65 examination) or the Uniform Combined State Law Examination (Series 66 examination) again.

(3) **Examination waivers.** ((~~The examination requirements shall not apply to an individual who currently~~)) You are not required to take the examinations set forth in subsection (1) of this section if you currently hold((~~s~~)) one of the following professional designations:

(a) Certified Financial Planner (CFP®) issued by the Certified Financial Planner Board of Standards, Inc.;

(b) Chartered Financial Consultant (ChFC) awarded by The American College, Bryn Mawr, Pennsylvania;

(c) Personal Financial Specialist (PFS) administered by the American Institute of Certified Public Accountants;

(d) Chartered Financial Analyst (CFA) granted by the ((~~Association for Investment Management and Research~~)) CFA Institute;

(e) Chartered Investment Counselor (CIC) granted by the Investment ((~~Counsel~~)) Adviser Association ((~~of America~~)); or

(f) Such other professional designation as the director may by order recognize.

(4) If ((~~the person~~)) you are applying for registration as an investment adviser ((~~is~~)) and you are any entity other than a sole proprietor, an officer, general partner, managing member, or other equivalent person of authority in the entity may take the examination on behalf of the entity. If the person ((~~taking~~)) that took the examination ceases to be a person of authority in the entity, then ((~~the investment adviser~~)) you must notify the director of a substitute person of authority who has ((~~passed the examinations required in subsection (1) of this section within two months in order to maintain the investment adviser license~~)) registered with the director as an investment adviser representative.

(5) **Registration requirements.**

(a) ((~~A person applying~~)) To apply for initial registration as an investment adviser ((~~shall~~)), you must file a completed Form ADV with IARD along with the following:

(i) Proof of complying with the examination or waiver requirements specified in subsections (1) through (4) above;

(ii) ((~~A financial statement demonstrating compliance with the requirements of WAC 460-24A-170~~)) Such financial statements as are set forth in WAC 460-24A-060, including a copy of the balance sheet for the last fiscal year, and if such balance sheet is as of a date more than ninety days from the date of filing the application, an unaudited balance sheet prepared as set forth in WAC 460-24A-060, if necessary;

(iii) A copy of the surety bond required by WAC 460-24A-170, if applicable;

(iv) The application fee specified in RCW 21.20.340; and

((~~(iv)~~)) (v) Such other documents as the director may require.

(b) ((~~A person applying~~)) To apply for initial registration as an investment adviser representative, you shall file a completed Form ((~~U-4~~)) U4 with IARD along with the following:

(i) Proof of complying with the examination or waiver requirements specified in subsections (1) through (4) above;

(ii) The application fee specified in RCW 21.20.340; and

(iii) Such other documents as the director may require.

(c) If you advise one or more pooled investment vehicles, then you must also submit to the division as part of your application, copies of the following documents:

(i) Account agreement with each qualified custodian for each pooled investment vehicle pursuant to WAC 460-24A-105;

(ii) Engagement letter with an independent certified public accountant or agreement with an independent party for each pooled investment vehicle pursuant to WAC 460-24A-107;

(iii) Private placement memorandum or other offering circular used to solicit investors to purchase interests in each pooled investment vehicle;

(iv) Subscription agreement for each pooled investment vehicle;

(v) Operating agreement for each pooled investment vehicle; and

(vi) Such other documents as the director may require in order to complete the application.

AMENDATORY SECTION (Amending WSR 01-16-125, filed 7/31/01, effective 10/24/01)

WAC 460-24A-057 Renewal of investment adviser and investment adviser representative registration—Delinquency fees. (1) **Application for renewal.** You may renew your registration as an investment adviser or investment adviser representative ((~~may be renewed~~)) by filing the following with IARD:

(a) Any renewal application required by IARD;

(b) The renewal fee required by RCW 21.20.340; and

(c) An electronically submitted Form ((~~U-4~~)) U4, unless:

(i) The Form ((~~U-4~~)) U4 has been previously submitted to IARD electronically; or

(ii) The investment adviser, filing on behalf of the investment adviser representative, has been granted a hardship exemption under WAC 460-24A-047(4).

(2) **Delinquency fees.** For any renewal application received by IARD after the expiration date set forth in WAC 460-24A-055, but on or before March 1 of the following year, the licensee shall pay a delinquency fee in addition to the renewal fee. The delinquency fee for investment advisers shall be one hundred dollars. The delinquency fee for investment adviser representatives shall be fifty dollars.

((~~(3)~~)) No renewal applications will be accepted after March 1. An investment adviser or investment adviser representative may apply for reregistration by complying with WAC 460-24A-050.

NEW SECTION

WAC 460-24A-059 Pending application—Notice of termination—Application for continuation. The director may at his or her discretion send notice to an applicant for investment adviser or investment adviser representative registration with respect to any pending application in which no action has been taken for nine months immediately prior to the sending of such notice, advising such applicant that the pending registration will be terminated thirty days from the date of sending such notice unless on or before the termination date the applicant responds in writing to the director showing good cause why the application should be continued as a pending application. If the applicant does not request in writing that the application be continued or show good cause why it should be continued, the director may terminate the pending application.

AMENDATORY SECTION (Amending WSR 01-16-125, filed 7/31/01, effective 10/24/01)

WAC 460-24A-060 Financial ((~~statements required on~~)) reporting requirements for investment advisers. ((~~Every~~)) (1) If you are an investment adviser ((~~shall~~)) registered or required to be registered under RCW 21.20.040 who has custody of client funds or securities or you require payment of advisory fees six months or more in advance and in excess of five hundred dollars per client, you must file with the director ((~~a~~)) an audited balance sheet as of the end of ((~~the investment adviser's~~)) your fiscal year. ((~~The~~)) Each balance sheet ((~~shall be prepared in accordance with~~)) filed pursuant to this subsection must be:

(a) Prepared in conformity with generally accepted accounting principles (GAAP) ((~~unless the director, on a case-by-case basis, allows another basis of presentation. The balance sheet shall be filed annually with the director not more than ninety days after the end of the investment adviser's fiscal year-end (unless extension of time is granted by the director)~~)) and audited in accordance with generally accepted auditing standards by an independent certified public accountant; and

(b) Accompanied by an audit opinion of the accountant on the audit of the balance sheet.

(2) If you are an investment adviser registered or required to be registered under RCW 21.20.040 that has custody as defined in WAC 460-24A-005 (1)(a)(iii) and you have notified the director on Form ADV that you will comply with the safekeeping requirements in WAC 460-24A-107 (1)(b), you must file with the director a copy of the audited financial statements of each pooled investment vehicle for which you are a general partner (or managing member or other comparable position).

(3) If you are an investment adviser registered or required to be registered under RCW 21.20.040 and are not subject to the financial statement reporting requirements in subsection (1) or (2) of this section, you must file with the director a balance sheet, which need not be audited, but which must be prepared in accordance with generally accepted accounting principles and represented by you or the person who prepared the statement as true and accurate, as of the end of your fiscal year.

(4) The financial statements required by this section must be filed with the director within one hundred twenty days following the end of your fiscal year, except for the audited financial statements of pooled investment vehicles you obtain and distribute pursuant to WAC 460-24A-107(1), which must be filed with the director within one hundred twenty days following the end of each pooled investment vehicle's fiscal year.

(5) If you are an investment adviser that has its principal place of business in a state other than this state, you must file only such reports as required by the state in which you maintain your principal place of business, provided that you are licensed in such state and are in compliance with such state's financial reporting requirements.

AMENDATORY SECTION (Amending WSR 01-16-125, filed 7/31/01, effective 10/24/01)

WAC 460-24A-070 Notice filing((~~s~~)) requirements for federal covered advisers. (1) **Notice filing.** If you are a federal covered adviser, you must file the notice filing required ((~~of a federal covered adviser~~)) pursuant to RCW 21.20.050 ((~~shall be filed~~)) with IARD on a completed Form ADV. ((~~A~~)) The notice filing ((~~of a federal covered adviser~~)) shall be deemed filed when the fee required by RCW 21.20.340 and the Form ADV are filed with and accepted by IARD on behalf of the state.

(2) ((~~Portions of Form ADV not yet accepted by IARD. Until IARD provides for the filing of Part 2 of Form ADV, Part 2 will be deemed filed if it is provided to the director within five days of the director's request. The federal covered adviser is not required to submit Part 2 of the Form ADV to the director unless requested.~~)) **Form ADV Part 2.** The director will accept a copy of Part 2 of Form ADV as filed electronically with IARD.

(3) **Renewal.** If you are a federal covered adviser, you must file the annual renewal of ((~~the~~)) your notice filing ((~~for a federal covered adviser shall be filed~~)) with IARD. The renewal ((~~of the notice filing for a federal covered adviser~~)) shall be deemed filed when the fee required by RCW 21.20.340 is filed with and accepted by IARD on behalf of the state.

(4) **Updates and amendments.** If you are a federal covered adviser, you must file any amendments to ((~~its~~)) your Form ADV with IARD in accordance with the instructions in the Form ADV.

(5) **Hardship exemption.** If you are a federal covered adviser that, because ((~~it has~~)) you have received a hardship exemption from the Securities and Exchange Commission (SEC), ((~~is~~)) are not required to file ((~~its~~)) your Form ADV with the SEC through IARD you shall, in lieu of filing electronically, file the documents and fees required by this section directly with the director.

NEW SECTION

WAC 460-24A-071 Registration exemption for investment advisers to private funds. (1) **Exemption for private fund advisers.** You are exempt from the registration requirements for investment advisers in RCW 21.20.040 if you are a private fund adviser as defined in WAC 460-24A-005 and you satisfy each of the following conditions:

(a) Neither you nor any of your advisory affiliates are subject to a disqualification as described in WAC 460-44A-505 (2)(d); and

(b) You file with the division each report and amendment thereto that an exempt reporting adviser is required to file with the Securities and Exchange Commission pursuant to Securities and Exchange Commission Rule 204-4, 17 C.F.R. 275.204-4.

(2) **Federal covered investment advisers.** If you are a private fund adviser that is registered with the Securities and Exchange Commission, you are not eligible for the exemption provided in subsection (1) of this section and you must comply with the state notice filing requirements applicable to federal covered investment advisers in WAC 460-24A-070.

(3) **Investment adviser representatives.** You are exempt from the registration requirements for investment adviser representatives set forth in RCW 21.20.040 if you are employed by or associated with an investment adviser that is exempt from registration in this state pursuant to subsection (1) of this section and you do not otherwise act as an investment adviser representative.

(4) **Electronic filing.** You must make the report filings described in subsection (1)(b) of this section electronically through IARD. A report shall be deemed filed when the report is filed and accepted by the IARD on the state's behalf.

(5) **Transition.** If you become ineligible for the exemption provided in subsection (1) of this section, you must comply with all applicable laws and rules requiring registration or notice filing within ninety days from the date your eligibility for this exemption ceases.

NEW SECTION

WAC 460-24A-072 Registration exemption for investment advisers to venture capital funds. (1) **Exemption for venture capital fund advisers.** You are exempt from the registration requirements for investment advisers in RCW 21.20.040 if you are exempt from registration under Section 203(l) of the Investment Advisers Act of 1940, 15 U.S.C. 80b-3(l), and Rule 203(l)-1 adopted thereunder, 17 C.F.R. 275.203(l)-1, provided you satisfy each of the following conditions:

(a) Neither you nor any of your advisory affiliates are subject to a disqualification as described in WAC 460-44A-505 (2)(d); and

(b) You file with the division each report and amendment thereto that an exempt reporting adviser is required to file with the Securities and Exchange Commission pursuant to Securities and Exchange Commission Rule 204-4, 17 C.F.R. 275.204-4.

(2) **Federal covered investment advisers.** If you are a venture capital fund adviser that is registered with the Securities and Exchange Commission, you are not eligible for the exemption provided in subsection (1) of this section and you must comply with the state notice filing requirements applicable to federal covered investment advisers in WAC 460-24A-070.

(3) **Investment adviser representatives.** You are exempt from the registration requirements for investment adviser representatives set forth in RCW 21.20.040 if you are employed by or associated with an investment adviser that is exempt from registration in this state pursuant to subsection (1) of this section and you do not otherwise act as an investment adviser representative.

(4) **Electronic filing.** You must make the report filings described in subsection (1)(b) of this section electronically through IARD. A report shall be deemed filed when the report is filed and accepted by the IARD on the state's behalf.

(5) **Transition.** If you become ineligible for the exemption provided in subsection (1) of this section, you must comply with all applicable laws and rules requiring registration or notice filing within ninety days from the date your eligibility for this exemption ceases.

AMENDATORY SECTION (Amending WSR 01-16-125, filed 7/31/01, effective 10/24/01)

WAC 460-24A-080 Termination of investment adviser and investment adviser representative registration and federal covered adviser notice filing status. (1) Investment advisers and federal covered advisers. If you are an investment adviser or federal covered adviser ((~~may~~)) and you want to terminate ((~~its~~)) your registration or notice filing ((~~status~~)), you must do so by complying with the instructions to Form ADV-W and filing a completed Form ADV-W with IARD.

(2) Investment adviser representative. ((~~The termination of~~)) If you are an investment adviser and you terminate an investment adviser representative, you must terminate the registration ((~~as an~~)) of the investment adviser representative pursuant to RCW 21.20.080 ((~~shall be reported~~)) by complying with the instructions to Form ((~~U-5~~)) U5 and filing a completed Form ((~~U-5~~)) U5 with IARD within thirty days of termination.

AMENDATORY SECTION (Amending Order 304, filed 2/28/75, effective 4/1/75)

WAC 460-24A-100 Advertisements by investment advisers. (1) ((~~It shall constitute~~)) If you are an investment adviser, federal covered adviser, or investment adviser representative, it is an "act, practice, or course of business" which operates or would operate as a fraud within the meaning of RCW 21.20.020 for ((~~an investment adviser~~)) you, directly or indirectly, to publish, circulate or distribute any advertisement:

(a) Which refers, directly or indirectly, to any testimonial of any kind concerning ((~~the investment adviser~~)) you or concerning any advice, analysis, report or other service rendered by ((~~such investment adviser~~)) you; or

(b) Which refers, directly or indirectly, to any past specific recommendations ((~~of such investment adviser~~)) you made which were or would have been profitable to any person: Provided, however, That this clause (b) does not prohibit ((~~an advertisement which sets~~)) you from setting out or ((~~offers~~)) offering to furnish a list of all recommendations you made ((~~by such investment adviser~~)) within the immediately preceding period of not less than one year if such advertisement, and such list if it is furnished separately:

(i) States the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date((~~,~~)); and

(ii) Contains the following cautionary legend on the first page thereof in print or type as large as the largest print or type used in the body or text thereof: "It should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list"; or

(c) Which represents, directly or indirectly, that any graph, chart, formula or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula or other device being offered will assist any person in making his own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use; or

(d) Which contains any statement to the effect that any report, analysis, or other service will be furnished free or without charge, unless such report, analysis or other service actually is or will be furnished entirely free and without any condition or obligation, directly or indirectly; or

(e) Which contains any untrue statement of a material fact, or which is otherwise false or misleading.

(2) For the purposes of this section, the term "advertisement" includes any notice, circular, letter or other written communication addressed to more than one person, or any notice or other announcement in any publication or by elec-

tronic means, including online, or by radio or television, which offers:

(a) Any analysis, report, or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell((,)); or

(b) Any graph, chart, formula or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell((,)); or

(c) Any other investment advisory service with regard to ((security)) securities.

AMENDATORY SECTION (Amending WSR 08-18-033, filed 8/27/08, effective 9/27/08)

WAC 460-24A-105 Requirements for an investment adviser that has custody or possession of client funds or securities. If you are an investment adviser registered or required to be registered under RCW 21.20.040, it shall constitute an "act, practice, or course of business" which operates or would operate as a fraud within the meaning of RCW 21.20.020 for you to have custody of client funds or securities unless:

(1) **You notify the director.** You notify the director promptly on Form ADV that you have or may have custody;

(2) **A qualified custodian maintains your clients' funds and securities.**

(a) A qualified custodian maintains your clients' funds and securities:

(i) In a separate account for each client under that client's name; or

(ii) In accounts that contain only your clients' funds and securities, under either your name as agent or trustee for the clients or, in the case of a pooled investment vehicle that you manage, in the name of the pooled investment vehicle; and

(b) You maintain a separate record for each such account which shows the name and address of the qualified custodian where such account is maintained, the dates and amounts of deposits in and withdrawals from such account, and the exact amount of each client's beneficial interest in such account;

(3) **You notify clients of the identity of the qualified custodian.** If you open an account with a qualified custodian on your client's behalf, either under the client's name, under your name as agent, or under the name of a pooled investment vehicle, you notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information. If you send account statements to a client to which you are required to provide this notice, you must include in the notification provided to that client and in any subsequent account statement you send that client a statement urging the client to compare the account statements from the custodian with those from you;

(4) **Either you or a qualified custodian sends account statements to your clients.** You or a qualified custodian sends your clients account statements subject to the following requirements:

(a) **Requirements if qualified custodian sends account statements.** If you do not send account statements to your clients, you have a reasonable basis for believing, after due inquiry, that the qualified custodian sends an account statement, at least quarterly, to each of your clients for which the qualified custodian maintains funds or securities, within a reasonable period of time after the end of the statement period, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period;

(b) **Requirements if you send account statements.** If the qualified custodian does not send account statements to your clients:

(i) You send account statements, at least quarterly, to each of your clients for whom you have custody of funds or securities, within a reasonable period of time after the end of the statement period, identifying the amount of funds and of each security of which you have custody at the end of the period and setting forth all transactions during that period;

(ii) An independent certified public accountant verifies all client funds and securities by actual examination at least once during each calendar year, pursuant to a written agreement between you and the accountant, at a time that is chosen by the accountant without prior notice or announcement to you and that is irregular from year to year((, and)). The written agreement must provide for the first examination to occur within six months of becoming subject to this subsection, except that, if the investment adviser maintains client funds or securities pursuant to this rule as a qualified custodian, the agreement must provide for the first examination to occur no later than six months after obtaining the internal control report. The written agreement must require the accountant to:

(A) File((s)) a ((copy of the special examination report)) certificate on Form ADV-E with the director within ((thirty)) one hundred twenty days ((after the completion of the examination)) of the time chosen by the independent certified public accountant to conduct the examination, stating that it has examined the funds and securities and describing the nature and extent of the examination; and

(((iii) The independent certified public accountant, upon finding any material discrepancies during the course of the examination, notifies)) (B) Notify the director within one business day of the finding of any material discrepancies during the course of the examination, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the director; and

(((c) **Account statements are sent to limited partners and members of limited liability companies that you advise.** If you are a general partner of a limited partnership (or managing member of a limited liability company, or hold a comparable position for another type of pooled investment vehicle), the account statements required under this subsection are sent to each limited partner (or member or other beneficial owner); and)) (C) File within four business days of the resignation or dismissal from, or other termination of, the engagement, or removing itself or being removed from consideration for being reappointed, Form ADV-E accompanied by a statement that includes:

(I) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

(II) An explanation of any problems relating to examination scope or procedure that contributed to such resignation, dismissal, removal, or other termination;

(5) **A client may designate an independent representative to receive account statements.** A client may designate an independent representative to receive, on his or her behalf, notices and account statements as required under subsections (3) and (4) of this section;

(6) **Investment advisers acting as qualified custodians.** If you are an investment adviser that maintains, or if you have custody because a related person maintains, client funds or securities pursuant to this rule as a qualified custodian in connection with the advisory services you provide to clients:

(a) You must enter into an agreement with an independent certified public accountant to conduct an examination to verify client funds and securities as otherwise provided in subsection (4)(b)(ii) of this section. The independent certified public accountant you retain must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules; and

(b) You must obtain, or receive from your related person, within six months of becoming subject to this subsection (6) and thereafter no less frequently than once each calendar year a written internal control report prepared by an independent certified public accountant subject to the following:

(i) The internal control report must include an opinion of an independent certified public accountant as to whether controls have been placed in operation as of a specific date, and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including safeguarding of funds and securities held by either you or a related person on behalf of your clients;

(ii) The independent certified public accountant must verify that the funds and securities are reconciled to a custodian other than you or your related person; and

(iii) The independent certified public accountant must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules.

AMENDATORY SECTION (Amending WSR 08-18-033, filed 8/27/08, effective 9/27/08)

WAC 460-24A-106 Additional custody requirements for an investment adviser that directly deducts fees from client accounts. (1) If you are an investment adviser registered or required to be registered under RCW 21.20.040 who has custody as defined in WAC 460-24A-005(1) ((~~solely~~)) because you have the authority to directly deduct fees from client accounts, you must comply with the safekeeping requirements in WAC 460-24A-105 and the following additional safeguards:

(a) **You must have your client's written authorization.** You must have written authorization from your client to deduct advisory fees from the account held with the qualified custodian.

(b) **You must provide notice to the qualified custodian and an itemized invoice to your client.** Each time a fee is directly deducted from your client's account, you must concurrently:

(i) Send the qualified custodian notice of the amount of the fee to be deducted from your client's account; and

(ii) Send your client an invoice itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee.

(c) **You must notify the director that you will comply with these safekeeping requirements.** You must notify the director on Form ADV that you will comply with the safekeeping requirements set forth in this section.

(2) **Waiver of net worth and bonding requirements.** If you have custody as defined in WAC 460-24A-005(1) solely because you have the authority to have fees directly deducted from client accounts and you comply with the safekeeping requirements set forth in this section, you are not required to comply with the net worth and bonding requirements for an investment adviser that has custody set forth in WAC 460-24A-170.

(3) **Waiver of audited balance sheet requirement.** If you have custody solely as defined in WAC 460-24A-005(1) because you have the authority to directly deduct fees from client accounts, you are not required to comply with the requirement to file an audited balance sheet as set forth in WAC 460-24A-060(1) if you comply with WAC 460-24A-060(3), the safekeeping requirements in WAC 460-24A-105, and subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 08-18-033, filed 8/27/08, effective 9/27/08)

WAC 460-24A-107 Additional custody requirements for an investment adviser that manages a pooled investment vehicle or trust. (1) If you are an investment adviser registered or required to be registered under RCW 21.20.040 that has custody as defined in WAC 460-24A-005 (1)(a)(iii), you must, in addition to complying with the safekeeping requirements set forth in WAC 460-24A-105, either:

(a) ((~~**Comply with additional safekeeping requirements.** In addition to the safekeeping requirements set forth in WAC 460-24A-105, you must comply with the following safekeeping requirements:~~)) **Engage an independent party to authorize withdrawals from the pooled account.**

(i) ((~~**You must engage an independent party to authorize withdrawals from the pooled account.**~~)) You must ((~~hire~~)) enter into a written agreement with an independent party to review all fees, expenses, and capital withdrawals from the pooled accounts;

(ii) ((~~**You must send detailed invoices or receipts to the independent party.**~~)) You must send all invoices or receipts to the independent party, detailing the amount of the fee, expenses, or capital withdrawal and the method of calculation such that the independent party can:

(A) Determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement); and

(B) Forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser; and

(iii) ((~~You must notify the director that you will comply with these additional safekeeping requirements.~~)) You must notify the director on Form ADV that you will comply with the safekeeping requirements in (a) of this subsection; or

(b) **((~~You must~~)) Provide audited financial statements of the pooled investment vehicle to all limited partners or members.** ((~~If you do not comply with the safekeeping requirements set forth in WAC 460-24A-105 and (a) of this subsection, you must comply with the following alternative safekeeping requirements:~~))

(i) ((~~The pooled investment vehicle must be subject to annual audits.~~)) You must cause the financial statements of the limited partnership (or limited liability company, or another type of pooled investment vehicle) for which you are a general partner (or managing member or other comparable position) to be subject to audit, at least annually, by an independent certified public accountant to be conducted in accordance with generally accepted auditing standards;

(ii) ((~~You must distribute audited financial statements for the pooled investment vehicle to all beneficial owners.~~)) You must distribute the audited financial statements ((~~prepared in accordance with generally accepted accounting principles for the limited partnership (or limited liability company, or another type of pooled investment vehicle) for which you are a general partner (or managing member or other comparable position)~~)) to all limited partners (or members or other beneficial owners), or the independent representative where one has been designated, within one hundred twenty days of the end of ((~~its~~)) the pooled investment vehicle's fiscal year. If the limited partners (or members or other beneficial owners) are themselves limited partnerships (or limited liability companies, or another type of pooled investment vehicle) that are related persons to you, you must distribute the audited financial statements to each beneficial owner that is unrelated to you; ((~~and~~))

(iii) ((~~You must notify the director that you will distribute audited financial statements of the pooled investment vehicle to all beneficial owners.~~)) You must distribute, upon liquidation, the fund's final audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners), or the independent representative where one has been designated, and the director promptly after the completion of such audit;

(iv) The written agreement with the independent certified public accountant must require the independent certified public accountant to, upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed, notify the director within four business days accompanied by a statement that includes:

(A) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

(B) An explanation of any problems relating to audit scope or procedure that contributed to such resignation, dismissal, removal, or other termination; and

(v) You must notify the director on Form ADV that you will comply with the safekeeping requirements in (b)(i) and (ii) of this subsection((~~.~~));

(2) **You must deliver account statements to each limited partner (or member or other beneficial owner).** If you are an investment adviser to a limited partnership (or managing member of a limited liability company, or hold a comparable position for another type of pooled investment vehicle), you must:

(a) Send the account statements required under WAC 460-24A-105 to each limited partner (or member or other beneficial owner). If the limited partners (or members or other beneficial owners) are themselves limited partnerships (or limited liability companies, or another type of pooled investment vehicle) that are your related persons, you must send the account statements required under WAC 460-24A-105 to each beneficial owner of the fund that is unrelated to you; and

(b) Include the following information in the account statements, which will satisfy the requirements under WAC 460-24A-105 (4)(b)(i):

(i) The total amount of all additions to and withdrawals from the fund as a whole as well as the opening and closing value of the fund at the end of the quarter based on the custodian's records;

(ii) A listing of all long and short positions on the closing date of the statement in accordance with FASB Rule ASC 946-210-50; and

(iii) The total amount of additions to and withdrawals from the fund by the investor as well as the total value of the investor's interest in the fund at the end of the quarter.

(3) **If you ((~~comply with the additional safekeeping requirements~~)) engage an independent party, you are not required to comply with the net worth and bonding requirements for an investment adviser that has custody.** If you have custody solely as defined in WAC ((~~460-24A-105~~)) 460-24A-005 (1)(a)(iii) and you comply with the safekeeping requirements in WAC 460-24A-105 and subsection (1)(a) of this section, you are not required to comply with the net worth and bonding requirements for an investment adviser that has custody set forth in WAC 460-24A-170.

((~~(3)~~)) (4) **If you distribute audited financial statements of the pooled investment vehicle to all beneficial owners, you are not required to comply with the surprise examination requirements.** You are not required to comply with the surprise examination requirements set forth in WAC 460-24A-105 (4)(b)(ii) ((~~and (iii)~~)) with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit if you otherwise comply with the safekeeping requirements in WAC 460-24A-105 and subsection (1)(b) of this section.

(5) **If you distribute audited financial statements of the pooled investment vehicle to all beneficial owners, you are not required to file an audited balance sheet.** If you have custody solely as defined in WAC 460-24A-005 (1)(a)(iii), you are not required to comply with the require-

ment to file an audited balance sheet as set forth in WAC 460-24A-060(1) if you comply with WAC 460-24A-060(3), the safekeeping requirements in WAC 460-24A-105, and subsections (1)(b) and (2) of this section.

AMENDATORY SECTION (Amending WSR 08-18-033, filed 8/27/08, effective 9/27/08)

WAC 460-24A-108 Additional custody requirements for an investment adviser that acts as trustee and investment adviser to a trust. If you are an investment adviser registered or required to be registered under RCW 21.20.040 that acts as an investment adviser to a trust and the trust has retained you or one of your representatives, employees, directors, or owners as trustee, you must comply with the following requirements:

(1) **You must send invoices to the qualified custodian and a person connected to the trust at the same time.** You must send to the grantor of the trust, the attorney for the trust if it is a testamentary trust, the co-trustee (other than you or one of your representatives, employees, directors, or owners); or a defined beneficiary of the trust, at the same time that you send any invoice to the qualified custodian, an invoice showing the amount of the trustees' fee or investment management or advisory fee, the value of the assets on which the fees were based, and the specific manner in which the fees were calculated.

(2) **You must have an agreement with a qualified custodian that contains certain terms.** You must enter into a written agreement with a qualified custodian that complies with the following requirements:

(a) **The agreement must restrict payments to you or persons related to you.** The agreement must specify that the qualified custodian will neither deliver trust securities nor transmit any funds to you or one of your representatives, employees, directors, or owners, except that the qualified custodian may pay trustees' fees to the trustee and investment management or advisory fees to you, provided that:

(i) The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than you or one of your representatives, employees, directors, or owners), or a defined beneficiary of the trust has authorized the qualified custodian in writing to pay those fees;

(ii) The statements for those fees show the amount of the fees for the trustee and, in the case of statements for investment management or advisory fees, show the value of the trust assets on which the fee is based and the manner in which the fee was calculated; and

(iii) The qualified custodian agrees to send to the grantor of the trust, the attorneys for a testamentary trust, the co-trustee (other than you or one of your representatives, employees, directors, or owners); or a defined beneficiary of the trust, at least quarterly, a statement of all disbursements from the account of the trust, including the amount of investment management fees paid to you and the amount of trustees' fees paid to the trustee.

(b) **The agreement must restrict the transfer of funds or securities.** Except as otherwise set forth in subsection (1)(b)(i) of this section, the agreement must specify that the qualified custodian may transfer funds or securities, or both, of the trust only upon the direction of the trustee (who may be you or one of your representatives, employees, directors, or owners), who you have duly accepted as an authorized signatory. The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than you or one of your representatives, employees, directors, or owners), or a defined beneficiary of the trust, must designate the authorized signatory for management of the trust. The agreement must further specify that the direction to transfer funds or securities, or both, can only be made to the following:

(i) To a trust company, bank trust department or brokerage firm independent from you for the account of the trust to which the assets relate;

(ii) To the named grantors or to the named beneficiaries of the trust;

(iii) To a third person independent from you in payment of the fees or charges of the third person including, but not limited to:

(A) Attorney's, accountant's, or qualified custodian's fees for the trust; and

(B) Taxes, interest, maintenance, or other expenses, if there is property other than securities or cash owned by the trust;

(iv) To third persons independent from you for any other purpose legitimately associated with the management of the trust; or

(v) To a broker-dealer in the normal course of portfolio purchases and sales, provided that the transfer is made on payment against delivery basis or payment against trust receipt.

(3) **You must notify the director that you will comply with these safekeeping requirements.** You must notify the director on Form ADV that you will comply with the safekeeping requirements set forth in this section.

(4) **You are not required to comply with the net worth and bonding requirements for an investment adviser that has custody if you comply with these safekeeping requirements.** If you have custody solely as defined in WAC 460-24A-005 (1)(a)(iii) because you are the trustee of a trust and you comply with the safekeeping requirements in WAC 460-24A-105 and this section, you are not required to comply with the net worth and bonding requirements for an investment adviser that has custody set forth in WAC 460-24A-170.

AMENDATORY SECTION (Amending WSR 08-18-033, filed 8/27/08, effective 9/27/08)

WAC 460-24A-109 Exceptions from custody requirements. Exceptions from the custody requirements for investment advisers that are registered or required to be registered under RCW 21.20.040 are available in the following circumstances:

(1)(a) **You are not required to ((~~comply with the custody requirements for~~)) engage a qualified custodian to hold certain privately offered securities.** You are not required to comply with WAC 460-24A-105(2) ((~~through 460-24A-108~~)) with respect to securities that are:

(i) Acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(ii) Uncertificated, and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and

(iii) Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(b) Notwithstanding (a) of this subsection, the provisions of this subsection (1) are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if you comply with the requirements in WAC 460-24A-107 (1)(b).

(2) **You are not required to comply with the custody requirements with respect to the account of a registered investment company.** You are not required to comply with WAC 460-24A-105 through 460-24A-108 with respect to the account of an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 to 80a-64.

(3) **You are not required to comply with the custody requirements with respect to a trust for the benefit of your relative.** You are not required to comply with the safekeeping requirements of WAC 460-24A-105 through 460-24A-108 or the net worth and bonding requirements for an investment adviser that has custody set forth in WAC 460-24A-170 if you have custody solely because you or one of your representatives, employees, directors, or owners is a trustee for a beneficial trust, if all of the following conditions are met for each trust:

(a) The beneficial owner of the trust is your parent, a grandparent, a spouse, a sibling, a child, or a grandchild. These relationships shall include "step" relationships.

(b) For each account under (a) of this subsection, you comply with the following:

(i) You provide a written statement to each beneficial owner of the account setting forth a description of the requirements of WAC 460-24A-105 through 460-24A-108 and WAC 460-24A-170 and the reasons why you will not be complying with those requirements;

(ii) You obtain from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement required under (b)(i) of this subsection; and

(iii) You maintain a copy of both documents described in (b)(i) and (ii) of this subsection until the account is closed or you are no longer trustee.

AMENDATORY SECTION (Amending WSR 00-01-001, filed 12/1/99, effective 1/1/00)

WAC 460-24A-110 Agency cross transactions. ((~~(a)~~)) (1) For purposes of this rule, "agency cross transaction for an advisory client" means a transaction in which a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, including an investment adviser representative, acts as a broker-dealer for both the advisory client and another person on the other side of the transaction. When acting in such capacity such person is required to be registered as a broker-dealer in this state unless excluded from the definition.

((~~(b)~~)) (2) If you are an investment ((~~effecting~~)) adviser or investment adviser representative, it shall be unlawful for you to effect an agency cross transaction for an advisory client ((~~shall be in compliance with~~)) under RCW 21.20.020(((~~3~~)))(2) ((~~if the following~~)) unless you satisfy these conditions ((~~are met~~)):

((~~(1)~~)) (a) You obtain the written consent of the advisory client ((~~executes a written consent~~)) prospectively authorizing ((~~the investment adviser~~)) you to effect agency cross transactions for such client;

((~~(2)~~)) (b) Before obtaining such written consent from the client, ((~~the investment adviser~~)) you make((~~s~~)) full written disclosure to the client that, with respect to agency cross transactions, ((~~the investment adviser~~)) you will act as broker-dealer for, receive commissions from and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions;

((~~(3)~~)) (c) At or before the completion of each agency cross transaction, ((~~the investment adviser~~)) you or any other person relying on this rule sends the client a written confirmation. You must include the following in the written confirmation ((~~shall include (A)~~)):

(i) A statement of the nature of the transaction((~~, (B)~~));

(ii) The date the transaction took place ((~~(C)~~));

(iii) An offer to furnish, upon request, the time when the transaction took place; and

((~~(D)~~)) (iv) The source and amount of any other remuneration the investment adviser received or will receive in connection with the transaction. In the case of a purchase, if the investment adviser was not participating in a distribution, or, in the case of a sale, if the investment adviser was not participating in a tender offer, the written confirmation may state whether the investment adviser has been receiving or will receive any other remuneration and that the investment adviser will furnish the source and amount of such remuneration to the client upon the client's written request;

((~~(4)~~)) (3) At least annually, and with or as part of any written statement or summary of the account from the investment adviser, the investment adviser or any other person relying on this rule sends each client a written disclosure statement identifying ((~~(A)~~)):

(a) The total number of agency cross transactions during the period for the client since the date of the last such statement or summary; and

((~~(B)~~)) (b) The total amount of all commissions or other remuneration the investment adviser received or will receive in connection with agency cross transactions for the client during the period((~~;~~)).

((~~(5)~~)) (4) Each written disclosure and confirmation required by this rule must include a conspicuous statement that the client may revoke the written consent required under subsection ((~~(b)(1)~~)) (2)(a) of this ((~~rule~~)) section at any time by providing written notice to the investment adviser((~~;~~)).

((~~(6)~~)) (5) No agency cross transaction may be effected in which the same investment adviser recommended the transaction to both any seller and any purchaser.

((~~(c)~~)) (6) Nothing in this rule shall be construed to relieve an investment adviser or investment adviser representative from acting in the best interest of the client, including fulfilling his duty with respect to the best price and execution

for the particular transaction for the client nor shall it relieve any investment adviser or investment adviser representative of any other disclosure obligations imposed by the Securities Act of Washington, chapter 21.20 RCW, and the rules and regulations thereunder.

NEW SECTION

WAC 460-24A-120 Compliance procedures and practices. If you are an investment adviser registered or required to be registered under RCW 21.20.040, or a federal covered adviser, and have more than one employee, it is unlawful under RCW 21.20.020 for you to provide investment advice to clients unless you:

(1) **Policies and procedures.** Adopt and implement written policies and procedures reasonably designed to prevent violation, by you and your supervised persons, of the Securities Act of Washington, chapter 21.20 RCW, and the rules adopted thereunder, and the federal securities laws;

(2) **Annual review of policies and procedures.** Review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation; and

(3) **Chief compliance officer.** Designate an individual responsible for administering the policies and procedures that you adopt under subsection (1) of this section.

NEW SECTION

WAC 460-24A-125 Proxy voting. If you are an investment adviser registered or required to be registered under RCW 21.20.040, or a federal covered adviser, it is unlawful under RCW 21.20.020 for you to exercise voting authority with respect to client securities, unless you:

(1) Adopt and implement written policies and procedures that are reasonably designed to ensure that you vote client securities in the best interest of clients, which procedures must include how you address material conflicts that may arise between your interests and those of your clients;

(2) Disclose to clients how they may obtain information from you about how you voted with respect to their securities; and

(3) Describe to clients your proxy voting policies and procedures and, upon request, furnish a copy of the policies and procedures to the requesting client.

NEW SECTION

WAC 460-24A-130 Contents of investment advisory contract. If you are an investment adviser registered or required to be registered under RCW 21.20.040, it is unlawful under RCW 21.20.020 and 21.20.030 for you to enter into, extend, or renew any investment advisory contract unless it provides in writing:

(1) The services to be provided, the term of the contract, the investment advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of termination or nonperformance of the contract, and whether and the extent to which the contract grants discretionary authority to you and any limits on such authority;

(2) That no direct or indirect assignment or transfer of the contract may be made by you without the written consent of the client or other party to the contract;

(3) That you shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client except as permitted under WAC 460-24A-150;

(4) That if you are a partnership, you shall notify the client or other party to the investment contract of any change in the membership of the partnership within a reasonable time after the change;

(5) That if you are an investment adviser who has custody as a consequence of your authority to make withdrawals from client accounts to pay your advisory fee, that the contract gives you the authority to deduct your advisory fees from the account held with the qualified custodian;

(6) The nature and extent to which you are granted proxy voting authority with respect to client securities;

(7) The terms for termination of the contract;

(8) The nature and extent to which you may deliver electronically the documents specified in WAC 460-24A-145, account statements, fee invoices, and other documents and the extent and manner in which a client may opt out of receiving documents electronically; and

(9) That the contract shall be governed by the laws of the state in which the client resides.

AMENDATORY SECTION (Amending Order 304, filed 2/28/75, effective 4/1/75)

WAC 460-24A-140 Guarantees of success are prohibited. ((~~No representation or statement, whether direct or by implication, should be made guaranteeing the success of investments made pursuant to recommendations of the advisory service concerned.~~)) It is an unlawful act, practice, or course of business which operates or would operate as a fraud or deceit under RCW 21.20.020 (1)(b) to make any representation or statement, whether directly or by implication, guaranteeing the success of investments made pursuant to the recommendations of an investment adviser or investment adviser representative.

AMENDATORY SECTION (Amending WSR 02-19-093, filed 9/17/02, effective 10/18/02)

WAC 460-24A-145 Investment adviser brochure rule. (1) **General requirements.** Unless otherwise provided in this rule, if you are an investment adviser((~~,~~)) registered or required to be registered pursuant to RCW 21.20.040, you shall, in accordance with the provisions of this section, ((~~offer and~~)) deliver to each advisory client and prospective advisory client ((~~written disclosure materials containing at least the information then so required by Part II of Form ADV and such other information as the director may require. If a federal covered adviser may utilize a copy of Part II of its Form ADV to provide the disclosures required pursuant to 17 CFR 275.204-3, then an investment adviser may use a copy of Part II of its ADV to provide the disclosures required by this section~~)):

(a) A brochure which may be a copy of Part 2A of your Form ADV or written documents containing the information

required by Part 2A of Form ADV. The brochure must comply with the language, organizational format and filing requirements specified in the Instructions to Form ADV Part 2;

(b) A copy of your Part 2B brochure supplement for each individual:

(i) Providing investment advice and having direct contact with clients in this state; or

(ii) Exercising discretion over assets of clients in this state, even if no direct contact is involved;

(c) A copy of your Part 2A Appendix 1 wrap fee brochure if you sponsor or participate in a wrap fee account;

(d) A summary of material changes, which may be included in Form ADV Part 2 or given as a separate document; and

(e) Such other information as the director may require.

(2) **Delivery.**

(a) ((~~An investment adviser,~~)) **Initial delivery.** Except as provided in (((~~(b)~~))) (c) of this subsection, you shall deliver the materials required by this section to an advisory client or prospective advisory client (i) not less than forty-eight hours prior to entering into any investment advisory contract with such client or prospective client, or (ii) at the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

(b) ((~~Delivery of the~~)) **Annual delivery.** Except as provided in (c) of this subsection, if there have been any material changes that have taken place since the last summary and brochure delivery to your clients, you must:

(i) Deliver within one hundred twenty days of the end of your fiscal year a free, updated brochure and related brochure supplements which include or are accompanied by a summary of the material changes; or

(ii) Deliver a summary of material changes that includes an offer to provide a copy of the updated brochure and supplements and information on how the client may obtain a copy of the brochure and supplements. You must mail or deliver any materials requested by the client pursuant to such an offer within seven days of the receipt of the request.

(c) **Exception for certain clients.** You are not required to deliver the materials ((~~required by (a)~~)) set forth in (1) of this ((~~subsection need not be made in connection with entering into a contract for impersonal advisory services.~~

~~(3) Offer to deliver.~~

~~(a) An investment adviser, except as provided in (b) of this subsection, annually shall, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the materials required by this section.~~

~~(b) The delivery or offer required by (a) of this subsection need not be made to advisory clients receiving advisory services solely pursuant to a contract for impersonal advisory services requiring a payment of less than $200.00.~~

~~(c) With respect to an advisory client entering into a contract or receiving advisory services pursuant to a contract for impersonal advisory services which requires a payment of $200.00 or more, an offer of the type specified in (a) of this subsection shall also be made at the time of entering into an advisory contract.~~

~~(d) Any materials requested in writing by an advisory client pursuant to an offer required by this subsection must be mailed or delivered within seven days of the receipt of the request.~~)) section to:

(i) Clients receiving advisory services solely pursuant to a contract for impersonal advisory services requiring a payment of less than two hundred dollars;

(ii) An investment company registered under the Investment Company Act of 1940; or

(iii) A business development company as defined in the Investment Company Act of 1940 and whose advisory contract meets the requirements of section 15c of that act.

(3) **Electronic delivery.** You may deliver the materials required by this section electronically if you:

(a) In the case of an initial delivery to a potential client, obtain a verification that readable copies of the materials were received by the client;

(b) In the case of deliveries other than initial deliveries, obtain each client's prior consent to provide the materials electronically;

(c) Prepare the electronically delivered materials in the format prescribed in (a) of this subsection and the instructions to Form ADV Part 2;

(d) Deliver the materials in a format that can be retained by the client in either electronic or paper form; and

(e) Establish procedures to supervise personnel transmitting the materials and prevent violations of this rule.

(4) **Delivery to limited partners.** If ((~~the investment adviser is~~)) you are the ((~~general partner of~~)) adviser to a limited partnership, ((~~the manager of~~)) a limited liability company, or ((~~the trustee of~~)) a trust, then((~~, for purposes of this section, the investment adviser~~)) you must treat each of the partnership's limited partners, the company's members, or the trust's beneficial owners, as a client. For purposes of this section, a limited liability partnership or limited liability limited partnership is a "limited partnership."

(5) ((~~Wrap fee program brochures.~~

~~(a) If the investment adviser is a sponsor of a wrap fee program, then the materials required to be delivered, by subsection (2) of this section, to a client or prospective client of the wrap fee program, must contain all information required by Form ADV. Any additional information must be limited to information applicable to wrap fee programs that the investment adviser sponsors.~~

~~(b) The investment adviser does not have to offer or deliver wrap fee information if another sponsor of the wrap fee program offers or delivers to the client or prospective client of the wrap fee program warp fee program information containing all the information the investment adviser's wrap fee program brochure must contain.~~

~~(6) Delivery of updates and amendments. When the disclosure materials required to be delivered pursuant to subsection (2) of this section become materially inaccurate, the investment adviser must amend and promptly deliver to its clients amendments to such disclosure materials. The instructions to Part 2 of Form ADV contain updating and delivery instructions that the investment adviser must follow. An amendment will be considered to be delivered promptly if the amendment is delivered within thirty days of the event that requires the filing of the amendment.~~

((~~(7)~~)) Omission of inapplicable information. If ((~~an investment adviser~~)) you render((~~s~~)) substantially different types of investment advisory services to different advisory clients, ((~~the investment adviser~~)) you may provide them with different disclosure materials, provided that each client receives all applicable information about services and fees. The disclosure delivered to a client may omit any information required by Part ((~~H~~)) 2 of Form ADV if such information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(((~~8~~))) (6) **Other disclosure obligations.** Nothing in this section shall relieve ((~~any investment adviser~~)) you from any obligation to disclose any information to ((~~its~~)) your advisory clients or prospective advisory clients not specifically required by this rule under chapter 21.20 RCW, the rules and regulations thereunder, or any other federal or state law.

(((~~9~~))) (7) **Definitions.** For the purposes of this rule:

(a) "Contract for impersonal advisory services" means any contract relating solely to the provision of investment advisory services:

(i) By means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;

(ii) Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or

(iii) Any combination of the foregoing services.

(b) "Entering into," in reference to an investment advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.

((~~(c) "Sponsor" of a wrap fee program means an investment adviser that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of other investment advisers in the program.~~

~~(d) "Wrap fee program" means an advisory program under which a specified fee or fees, not based directly upon transactions in a client's account, is charged for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and the execution of client transactions.~~))

AMENDATORY SECTION (Amending WSR 00-01-001, filed 12/1/99, effective 1/1/00)

WAC 460-24A-150 Performance compensation arrangements. (1) **General.** If you are an investment adviser you may, without violating RCW 21.20.030(1), enter into ((~~a performance compensation arrangement with a customer that complies with Securities and Exchange Commission Rule 205-3, as made effective in Release No. IA-996 and as amended in Release No. IA-1731, under the Investment Advisers Act of 1940. Rule 205-3 is found in the CCH Federal Securities Law Reports published by Commerce Clearing House. Copies of the rule are also available at the office of the securities administrator.~~)), extend, or renew an investment advisory contract which provides for compensation to you on the basis of a share of capital gains upon or capital appreciation of the funds, or any portion of the funds, of the client if:

(a) You are an investment adviser who is not registered and is not required to be registered under RCW 21.20.040; or

(b) The client is a "qualified client" as defined in subsection (2) of this section and the conditions of subsections (3) through (8) of this section are met.

(2) **Definitions.** For the purposes of this section:

(a) The term "qualified client" means:

(i) A natural person who, or a company that, immediately after entering into the contract has at least one million dollars under the management of the investment adviser;

(ii) A natural person who, or a company that, the investment adviser entering into the contract (and any person acting on his or her behalf) reasonably believes, immediately prior to entering into the contract, either:

(A) Has a net worth (together, in the case of a natural person, with assets held jointly with a spouse) of more than two million dollars. For purposes of calculating a natural person's net worth:

(I) The person's primary residence must not be included as an asset;

(II) Indebtedness secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time the investment advisory contract is entered into may not be included as a liability (except that if the amount of such indebtedness outstanding at the time of calculation exceeds the amount outstanding sixty days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess must be included as a liability); and

(III) Indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the residence must be included as a liability; or

(B) Is a qualified purchaser as defined in section 2 (a)(51)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a-2 (a)(51)(A)) at the time the contract is entered into; or

(iii) A natural person who immediately prior to entering into the contract is:

(A) An executive officer, director, trustee, general partner, or person serving in a similar capacity, of the investment adviser; or

(B) An employee of the investment adviser (other than an employee performing solely clerical, secretarial, or administrative functions with regard to the investment adviser) who, in connection with his or her regular functions or duties, participates in the investment activities of such investment adviser, provided that such employee has been performing such functions and duties for or on behalf of the investment adviser, or substantially similar functions or duties for or on behalf of another company for at least twelve months.

(b) The term "company" has the same meaning as in section 202 (a)(5) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2 (a)(5)), but does not include a company that is required to be registered under the Investment Company Act of 1940 but is not registered.

(c) The term "private investment company" means a company that would be defined as an investment company under section 3(a) of the Investment Company Act of 1940

(15 U.S.C. 80a-3(a)) but for the exception provided from that definition by section 3 (c)(1) of such Act (15 U.S.C. 80a-3 (c)(1)).

(d) The term "executive officer" means the president, any vice-president in charge of a principal business unit, division or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions, for the investment adviser.

(3) **Compensation formula.** The compensation paid to you with respect to the performance of any securities over a given period must be based on a formula with the following characteristics:

(a) In the case of securities for which market quotations are readily available within the meaning of Rule 2a-(4)(a)(1) under the Investment Company Act of 1940 (Definition of "Current Net Asset Value" for Use in Computing Periodically the Current Price of Redeemable Security), 17 C.F.R. 270.2a-4 (a)(1), the formula must include the realized capital losses and unrealized capital depreciation of the securities over the period;

(b) In the case of securities for which market quotations are not readily available within the meaning of Rule 2a-4 (a)(1) under the Investment Company Act of 1940, 17 C.F.R. 270.2a-4 (a)(1), the formula must include:

(i) The realized capital losses of securities over the period;

(ii) If the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; and

(c) The formula must provide that any compensation paid to you under this section is based on the gains less the losses (computed in accordance with (a) and (b) of this subsection) in the client's account for a period of not less than one year.

(4) **Client disclosure.** To the extent not otherwise disclosed on Form ADV Part 2, you must disclose in writing to the client all material information concerning the proposed advisory arrangement, including the following:

(a) That the fee arrangement may create an incentive for the investment adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;

(b) Where relevant, that the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;

(c) The period which will be used to measure investment performance throughout the contract and their significance in the computation of the fee;

(d) The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the investment adviser believes that the index is appropriate; and

(e) Where your compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available within the meaning of Rule 2a-4 (a)(1) under the Investment Company Act of 1940, 17 C.F.R. 270.2a-4 (a)(1), how the securities will be valued and the extent to which the valuation will be independently determined.

(5) **Equity owners.** In the case of a private investment company, as defined in subsection (2)(c) of this rule, an investment company registered under the Investment Company Act of 1940, or a business development company, as defined in section 202 (a)(22) of the Investment Advisers Act of 1940, each equity owner of any such company (except for the investment adviser entering into the contract and any other equity owners not charged a fee on the basis of a share of capital gains or capital appreciation) will be considered a client for the purposes of subsection (1) of this rule.

(6) **Informed consent.** You or any of your investment adviser representatives that enter into a contract under this rule, must reasonably believe, immediately before entering into the contract that the contract represents an arm's length arrangement between the parties and that the client, alone or together with the client's independent agent, understands the proposed method of compensation and its risks.

(7) **Nonexclusive.** Any person entering into or performing an investment advisory contract under this section is not relieved of any obligations under RCW 21.20.020 or any other applicable provision of the Securities Act of Washington, chapter 21.20 RCW, or any rule or order thereunder.

(8) **Obligations of independent representative.** Nothing in this section shall relieve a client's independent representative from any obligation to the client under applicable law.

(9) **Transition rules.**

(a) **Registered investment advisers.** If you are a registered investment adviser that entered into a contract and satisfied the conditions of this section that were in effect when the contract was entered into, you will be considered to satisfy the conditions of this section. If a natural person or company who was not a party to the contract becomes a party (including an equity owner of a private investment company advised by the adviser), however, the conditions of this section in effect at that time will apply with regard to that person or company.

(b) **Registered investment advisers that were previously not registered.** This section shall not apply to an advisory contract entered into when you were not required to register and were not registered. If a natural person or a company who was not a party to the contract becomes a party (including an equity owner of a private investment company advised by the adviser) when you are registered or required to register, however, the conditions of this section in effect at that time will apply with regard to that person or company.

(c) **Certain transfers of interest.** Solely for purposes of (a) and (b) of this subsection, a transfer of an equity ownership interest in a private investment company by gift or bequest, or pursuant to an agreement related to a legal separation or divorce, will not cause the transferee to "become a party" to the contract and will not cause this section to apply to such transferee.

AMENDATORY SECTION (Amending Order 304, filed 2/28/75, effective 4/1/75)

WAC 460-24A-160 Restrictions on advertising refunds. ((~~Advisory services should not~~)) If you are in an investment adviser or investment adviser representative, it is

unlawful under RCW 21.20.020 to advertise or represent to subscribers or customers for advisory services that subscriptions, fees or other payments will be refunded if they are not satisfied unless:

(1) Such undertaking to refund is clear and unequivocal and is concerned not with the merit or success of the service, but with the customer's satisfaction therewith; and

(2) ((the investment adviser's)) Your financial ((responsibility)) situation is adequate to ((insure its)) ensure your ability to meet all such refund demands.

AMENDATORY SECTION (Amending WSR 08-18-033, filed 8/27/08, effective 9/27/08)

WAC 460-24A-170 Minimum financial requirements for investment advisers. (1) If you are an investment adviser registered or required to be registered under RCW 21.20.040, who has custody of client funds or securities, you shall maintain at all times a minimum net worth of $35,000 unless provided otherwise in this chapter. If you are an investment adviser registered or required to be registered under RCW 21.20.040, who has discretionary authority over client funds or securities, but does not have custody of client funds or securities, you shall maintain at all times a minimum net worth of $10,000.

(2) If you are an investment adviser registered or required to be registered under RCW 21.20.040 who has custody or ((discretion of)) discretionary authority over client funds or securities, but does not meet the minimum net worth requirements in subsection (1) of this section you shall ((be bonded)) maintain a bond in the amount of the net worth deficiency rounded up to the nearest $5,000. Any bond required by this section shall be in the form determined by the director, issued by a company qualified to do business in this state, and shall be subject to the claims of all clients of the investment adviser regardless of the ((client's)) clients' states of residence.

(3) If you are an investment adviser registered or required to be registered under RCW 21.20.040, ((who accepts prepayment of more than $500 per client and six or more months in advance,)) you shall maintain at all times a positive net worth.

(4) Unless otherwise exempted, as a condition of the right to transact business in this state, ((every)) if you are an investment adviser registered or required to be registered under RCW 21.20.040 you shall, by the close of business on the next business day, notify the director if ((the investment adviser's)) your net worth is less than the minimum required. After transmitting such notice, ((each investment adviser)) you shall file, by the close of business on the next business day, a report with the director of its financial condition, including the following:

(a) A trial balance of all ledger accounts;

(b) A statement of all client funds or securities which are not segregated;

(c) A computation of the aggregate amount of client ledger debit balances; and

(d) A statement as to the number of client accounts.

(5) For purposes of this section, the term "net worth" shall mean an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: Prepaid expenses (except as to items properly classified as assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature; primary residence, home furnishings, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

(6) For purposes of this section, if you are an investment adviser you shall not be deemed to be exercising discretion when you place trade orders with a broker-dealer pursuant to a third-party trading agreement if:

(a) You have executed an investment adviser contract exclusively with your client which acknowledges that a third-party trading agreement will be executed to allow you to effect securities transactions for your client in your client's broker-dealer account;

(b) Your contract specifically states that your client does not grant discretionary authority to you and you in fact do not exercise discretion with respect to the account; and

(c) A third-party trading agreement is executed between your client and a broker-dealer which specifically limits your authority in your client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.

(7) The director may require that a current appraisal be submitted in order to establish the worth of any asset.

(((7) Every)) (8) If you are an investment adviser that has its principal place of business in a state other than this state, you shall maintain only such minimum net worth as required by the state in which ((the investment adviser)) you maintain((s its)) your principal place of business, provided ((the investment adviser is)) you are licensed in that state and ((is)) are in compliance with that state's minimum capital requirements.

AMENDATORY SECTION (Amending WSR 01-16-125, filed 7/31/01, effective 10/24/01)

WAC 460-24A-200 Books and records to be maintained by investment advisers. (1) ((Every)) If you are an investment adviser registered or required to be registered pursuant to RCW 21.20.040, you shall make and keep true, accurate, and current the following books, ledgers, and records:

(a) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

(b) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

(c) A memorandum of each order given by ((the investment adviser)) you for the purchase or sale of any security, of any instruction received by ((the investment adviser)) you from a client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction,

modification or cancellation; shall identify the person connected with ((~~the investment adviser~~)) you who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of a power of attorney shall be so designated.

(d) All check books, bank statements, canceled checks and cash reconciliations of the investment adviser.

(e) All bills or statements (or copies thereof), paid or unpaid, relating to ((~~the~~)) your business ((~~of the investment adviser~~)).

(f) All trial balances, financial statements, and internal audit working papers relating to ((~~the investment adviser's~~)) your business as an investment adviser. For purposes of this subsection, "financial statements" shall mean a balance sheet prepared in accordance with generally accepted accounting principles, ((~~and~~)) an income statement, a cash flow statement, and a net worth computation, if applicable, as required by WAC 460-24A-170.

(g) Originals of all written communications received and copies of all written communications sent by ((~~the investment adviser~~)) you relating to your investment advisory business including, but not limited to:

(i) Any recommendation made or proposed to be made and any advice given or proposed to be given((~~,~~));

(ii) Any receipt, disbursement or delivery of funds or securities((~~, or~~)); and

(iii) The placing or execution of any order to purchase or sell any security: Provided, however, That ((~~the investment adviser~~)) you shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for ((~~the investment adviser~~)) you: And provided, That if ((~~the investment adviser~~)) you send((~~s~~)) any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than ten persons, ((~~the investment adviser~~)) you shall not be required to keep a record of the names and addresses of the persons to whom it was sent, except that if such notice, circular or advertisement is distributed to persons named on any list, ((~~the investment adviser~~)) you shall retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof.

(h) A list or other record of all accounts in which ((~~the investment adviser is~~)) you are vested with any discretionary ((~~power with respect to~~)) authority over the funds, securities or transactions of any client.

(i) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to ((~~the investment adviser~~)) you.

(j) A written copy of each signed agreement entered into by ((~~the investment adviser~~)) you with any client and all other written agreements otherwise relating to ((~~the investment adviser's~~)) your business as an investment adviser.

(k) A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication, including by electronic media, and all amendments thereto, that ((~~the investment advisers~~)) you circulate((~~s~~)) or distribute((~~s~~)), directly or indirectly, to two or more persons (other than persons connected with ((~~the investment adviser~~)) you), and if such communication recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum ((~~of the investment adviser~~)) by you indicating the reasons for the recommendation.

(l)(i) A record of every transaction in a security in which ((~~the investment adviser~~)) you or any ((~~advisory representative (as hereinafter defined) of the investment adviser~~)) of your advisory representatives has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except:

(A) Transactions effected in any account over which neither ((~~the investment adviser~~)) you nor any of your advisory representatives ((~~of the investment adviser~~)) has any direct or indirect influence or control; and

(B) Transactions in securities which are direct obligations of the United States.

The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that ((~~the investment adviser~~)) you or your advisory representative has any direct or indirect beneficial ownership in the security. ((~~A~~)) You shall record each transaction ((~~shall be recorded~~)) not later than ten days after the end of the calendar quarter in which the transaction was effected.

(ii) For the purposes of this subsection (1)(l), the following definitions will apply:

(A) "Advisory representative" shall mean any of your partners, officers or directors ((~~of the investment adviser~~)); any employee who participates in any way in the determination of which recommendations shall be made, or whose functions or duties relate to the determination of which recommendation shall be made; any employee who, in connection with his or her duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by ((~~the investment adviser~~)) you prior to the effective dissemination of the recommendations:

(I) Any person in a control relationship to ((~~the investment adviser~~)) you;

(II) Any affiliated person of a controlling person; and

(III) Any affiliated person of an affiliated person.

(B) "Control" shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than twenty-five percent of the voting securities of a company shall be presumed to control such company.

(iii) ((~~An investment adviser~~)) You shall not be deemed to have violated the provisions of this subsection (1) because

of the failure to record securities transactions of any advisory representative if ((~~the investment adviser establishes~~)) you establish that ((~~it~~)) you instituted adequate procedures, and used reasonable diligence to obtain promptly, reports of all transactions required to be recorded.

(m)(i) Notwithstanding the provisions of (l) of this subsection, ((~~where the investment adviser is~~)) if you are primarily engaged in a business or businesses other than advising investment advisory clients, you must maintain a record ((~~must be maintained~~)) of every transaction in a security in which ((~~the investment adviser~~)) you or any of your advisory representatives (as hereinafter defined) ((~~of the investment adviser~~)) has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except:

(A) Transactions effected in any account over which neither ((~~the investment adviser~~)) you nor any of your advisory representatives ((~~of the investment adviser~~)) has any direct or indirect influence or control; and

(B) Transactions in securities which are direct obligations of the United States.

The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that ((~~the investment adviser~~)) you or any of your advisory representatives has any direct or indirect beneficial ownership in the security. You shall record a transaction ((~~shall be recorded~~)) not later than ten days after the end of the calendar quarter in which the transaction was effected.

(ii) ((~~An investment adviser is~~)) You are "primarily engaged in a business or businesses other than advising investment advisory clients" ((~~when~~)) if, for each of ((~~its~~)) your most recent three fiscal years or for the period of time since organization, whichever is lesser, ((~~the investment adviser~~)) you derived, on an unconsolidated basis, more than fifty percent of:

(A) ((~~Its~~)) Your total sales and revenues; and

(B) ((~~Its~~)) Your income (or loss) before income taxes and extraordinary items,

from such other business or businesses.

(iii) For purposes of this subsection (1)(m) of this section the following definitions will apply:

(A) "Advisory representative," when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, shall mean any partner, officer, director, or employee of the investment adviser who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

(I) Any person in a control relationship to the investment adviser;

(II) Any affiliated person of a controlling person; and

(III) Any affiliated person of an affiliated person.

(B) "Control" shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than twenty-five percent of the voting securities of a company shall be presumed to control such company.

(iv) ((~~An investment adviser~~)) You shall not be deemed to have violated the provisions of this subsection (1)(m) because of ((~~the~~)) your failure to record securities transactions of any advisory representative if ((~~the investment adviser establishes~~)) you establish that ((~~it~~)) you instituted adequate procedures, and used reasonable diligence to obtain promptly, reports of all transactions required to be recorded.

(n) The following items related to WAC 460-24A-145 and Part ((~~II~~)) 2 of Form ADV:

(i) A copy of each written statement, and each amendment or revision, given or sent to any of your clients or prospective clients ((~~of the investment adviser~~)) as required by WAC 460-24A-145;

(ii) Any summary of material changes that is required by Part ((~~II~~)) 2 of Form ADV that is not included in the written statement; and

(iii) A record of the dates that each written statement, each amendment or revision thereto, and each summary of material changes was given or offered to any client or prospective client who subsequently becomes a client.

(o) For each client that ((~~was~~)) you obtained ((~~by the adviser~~)) by means of a solicitor to whom you paid a cash fee ((~~was paid by the adviser~~)):

(i) Evidence of a written agreement to which ((~~the adviser is~~)) you are a party related to the payment of such fee;

(ii) A signed and dated acknowledgment of receipt from the client evidencing the client's receipt of ((~~the investment adviser's~~)) your disclosure statement and a written disclosure statement of the solicitor; and

(iii) A copy of the solicitor's written disclosure statement. The written agreement, acknowledgment, and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 275.206(4)-3 of the Investment Advisers Act of 1940.

For purposes of this subsection, the term "solicitor" shall mean any person or entity who, for compensation, acts as an agent of an investment adviser in referring potential clients.

(p) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including, but not limited to, electronic media that ((~~the investment adviser~~)) you circulate((~~s~~)) or distribute((~~s~~)), directly or indirectly, to two or more persons (other than persons connected with ((~~the investment adviser~~)) you); provided however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets

necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this subsection.

(q) A file containing a copy of all written communications received or sent regarding any litigation involving ((~~the investment adviser~~)) you or any investment adviser representative or employee, and regarding any written customer or client complaint.

(r) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

(s) Written information about each security that you recommended a client buy or sell that is the basis for making any recommendation or providing any investment advice to such client.

(t) Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

((~~(t)~~)) (u) A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self regulatory organization and that pertains to ((~~the registrant~~)) you or ((~~its~~)) your advisory representatives as that term is defined in (m)(iii)(A) of this subsection, which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

((~~(u)~~)) (v) If you inadvertently held or obtained a client's securities or funds and returned them to the client within three business days or forwarded third-party checks within three business days, you shall keep the following records relating to the inadvertent custody:

(i) Issuer;

(ii) Type of security and series;

(iii) Date of issue;

(iv) For debt instruments, the denomination, interest rate and maturity date;

(v) Certificate number, including alphabetical prefix or suffix;

(vi) Name in which registered;

(vii) Date given to the adviser;

(viii) Date sent to client or sender;

(ix) Form of delivery to client or sender, or copy of the form of delivery to client or sender; and

(x) Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

(w) Copies, with original signatures of ((~~the investment adviser's~~)) your appropriate signatory and the investment adviser representative, of each initial Form ((~~U-4~~)) U4 and each amendment to Disclosure Reporting Pages (DRPs ((~~U-4~~))) must be retained by ((~~the investment adviser~~)) you (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.

((~~(2)~~)) (x) If you obtain possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply with the exception from custody under WAC 460-24A-109(1), you shall keep the following records:

(i) A record showing the issuer or current transfer agent's name, address, phone number, and other applicable contact information pertaining to the party responsible for recording client interests in the securities; and

(ii) A copy of any legend, shareholder agreement or other agreement showing that those securities are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(y) A copy of a current written business continuity plan which identifies procedures to be followed in the event of an emergency or significant business disruption and which is reasonably designed to enable you to meet your fiduciary obligations to your clients.

(2)(a) If ((~~an investment adviser~~)) you are subject to subsection (1) of this section ((~~has~~)) and have custody or possession of securities or funds of any client, the records required to be made and kept under subsection (1) of this section shall include:

((~~(a)~~)) (i) A copy of any and all documents executed by the client (including a limited power of attorney) under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian.

(ii) A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.

((~~(b)~~)) (iii) A separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase or sale, and all debits and credits.

((~~(c)~~)) (iv) Copies of confirmations of all transactions effected by or for the account of any client.

((~~(d)~~)) (v) A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount of interest of each client, and the location of each security.

((~~(3) Every investment adviser~~)) (vi) A copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If you also generate a statement that is delivered to the client, you shall also maintain copies of such statements along with the date such statements were sent to the clients.

(vii) If applicable to your situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination.

(viii) A record of any finding by the independent certified public accountant of any material discrepancies found during the examination.

(ix) If applicable, evidence of the client's designation of an independent representative.

(b) If you have custody because you advise a pooled investment vehicle, as defined in WAC 460-24A-005 (1)(a)(iii), you shall also keep the following records:

(i) True, accurate and current account statements;

(ii) Where you comply with WAC 460-24A-107 (1)(b) the records required to be made and kept shall include:

(A) The date of the audit;

(B) A copy of the audited financial statements; and

(C) Evidence of the mailing of the audited financial statements to all limited partners, members or other benefi-

cial owners within one hundred twenty days of the end of its fiscal year.

(iii) Where you comply with WAC 460-24A-107 (1)(a) the records required to be made and kept shall include:

(A) A copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent party; and

(B) Copies of all invoices and receipts showing the approval by the independent party for payment through the qualified custodian.

(c) If you have custody because you are acting as the trustee for a beneficial trust as it is described in WAC 460-24A-109(3), you shall also keep the following records until the account is closed or the adviser is no longer acting as trustee:

(i) A copy of the written statement given to each beneficial owner setting forth a description of the requirements of WAC 460-24A-105 and the reason why you will not be complying with those requirements; and

(ii) A written acknowledgment signed and dated by each beneficial owner, and evidencing receipt of the statement required under WAC 460-24A-109 (3)(b).

(3) If you are subject to subsection (1) of this section ((~~who~~)) and you render((~~s~~)) any investment supervisory or management service to any client, you shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by ((~~the investment adviser~~)) you, make and keep true, accurate and current:

(a) Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase or sale.

(b) For each security in which any client has a current position, information from which ((~~the investment adviser~~)) you can promptly furnish the name of each client, and the current amount ((~~of~~)) or the interest of the client.

(4) Any books or records required by this section may be maintained by ((~~the investment adviser~~)) you in such manner that the identity of any client to whom ((~~such investment adviser~~)) you render((~~s~~)) investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(5) ((~~Every investment adviser~~)) If you are subject to subsection (1) of this section, you shall preserve the following records in the manner prescribed:

(a) All books and records required to be made under the provisions of subsections (1) to (3)(((~~(a)~~))), inclusive, of this section except for books and records required to be made pursuant to subsection (1)(k) and (p) of this section shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on the record, the first two years in ((~~the~~)) your principal office ((~~of the investment adviser~~)).

(b) Your partnership articles and any amendments, articles of incorporation, charter documents, minute books and stock certificate books of ((~~the investment adviser~~)) you and ((~~of~~)) any of your predecessors, shall be maintained in ((~~the~~)) your principal office ((~~of the investment adviser~~)) and preserved until at least three years after termination of the enterprise.

(c) Books and records required to be made pursuant to subsection (1)(k) and (p) of this section shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in ((~~the~~)) your principal office ((~~of the investment adviser~~)), from the end of the fiscal year during which ((~~the investment adviser~~)) you last published or otherwise disseminated, directly or indirectly, including by electronic media, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication.

(d) Notwithstanding other record preservation requirements of this section, you shall maintain the following records or copies ((~~shall be maintained~~)) at ((~~the~~)) your business location ((~~of the investment adviser~~)) from which the customer or client is being provided or has been provided with investment advisory services:

(i) Records required to be preserved under subsections (1)(c), (g) through (j), (n), (o), and (q) through (s), (2), and (3) of this section shall be maintained for the period prescribed in (a) of this subsection; and

(ii) Records or copies required pursuant to subsection (1)(k) and (p) of this section which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number shall be maintained for the period prescribed in (c) of this subsection.

(6) If you are an investment adviser subject to subsection (1) of this section, you shall, before ceasing to conduct or discontinuing business as an investment adviser, ((~~shall~~)) arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the director in writing of the exact address where the books and records will be maintained during the period.

(7)(a) ((~~The records required to be maintained and preserved pursuant to this section may be immediately produced or reproduced by photograph on film or, as provided in (b) of this subsection, on magnetic disk, tape, or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:~~

~~(i) Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;~~

~~(ii) Be ready at all times to promptly provide any facsimile enlargement of film or computer printout or copy of the computer storage medium that the director, by its examiners or other representatives, may request;~~

~~(iii) Store, separately from the original, one copy of the film or computer storage medium for the time required;~~

~~(iv) With respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction; and~~

~~(v) With respect to records stored on photographic film, at all times have available for the director's examination of its records pursuant to RCW 21.20.100, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.~~

~~(b) Pursuant to (a) of this subsection, an investment adviser may maintain and preserve on computer tape, disk, or other computer storage medium records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or received by the adviser solely on electronic media or by electronic data transmission.~~)) The records required to be maintained and preserved may be immediately produced or reproduced, and maintained and preserved for the required time, by an investment adviser on:

(i) Paper or hard copy form, as those records are kept in their original form;

(ii) Micrographic media, including microfilm, microfiche, or any similar medium; or

(iii) Electronic storage media, including any digital storage medium or system that meets the terms of this section.

(b) The investment adviser must:

(i) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(ii) Provide promptly any of the following that the director may request:

(A) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(B) A legible, true, and complete printout of the record; and

(C) Means to access, view, and print the records; and

(iii) Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

(c) In the case of records created or maintained on electronic storage media, the investment adviser must establish and maintain procedures:

(i) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(ii) To limit access to the records to properly authorized personnel and the director; and

(iii) To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

(8) As used in this section, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and "discretionary authority" shall not include discretion as to the price at which, or the time when, a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

(9) Any book or other record made, kept, maintained, and preserved in compliance with Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained, and preserved under this section, shall be deemed to be made, kept, maintained, and preserved in compliance with this section.

(10) ((~~Every~~)) If you are an investment adviser registered or required to be registered in this state and ((~~that has its~~)) have your principal place of business in a state other than this state ((~~shall be~~)), you are exempt from the requirements of this section, provided ((~~the investment adviser is~~)) you are licensed in the state where ((~~it has its~~)) you have your principal place of business and ((~~is~~)) are in compliance with that state's recordkeeping requirements.

AMENDATORY SECTION (Amending WSR 01-16-125, filed 7/31/01, effective 10/24/01)

WAC 460-24A-205 Notice of changes by investment advisers and investment adviser representatives. (1) ((~~Each licensed investment adviser must~~)) If you are an investment adviser registered or required to be registered pursuant to RCW 21.20.040, you must:

(a) Promptly file with IARD, in accordance with the instructions to Form ADV, any amendments to ((~~its~~)) your Form ADV. An amendment will be considered promptly filed if it is filed within thirty days of the event that requires the filing of the amendment; ((~~and~~))

(b) File an ((~~updated~~)) annual updating amendment to the Form ADV with IARD within ninety days ((~~of~~)) after the end of ((~~the investment adviser's~~)) your fiscal year; and

(c) File thirty days prior to use any amendments to your advisory contracts or offering materials for any pooled investment vehicles that you advise.

(2) ((~~Each~~)) If you are an investment adviser representative ((~~has~~)) registered or required to be registered pursuant to RCW 21.20.040, you have a continuing obligation to update the information required by Form ((~~U-4~~)) U4 as changes occur and you must promptly file with IARD any amendments to ((~~the representative's~~)) your Form ((~~U-4~~)) U4. An amendment will be considered promptly filed if it is filed within thirty days of the event that requires the filing of the amendment.

AMENDATORY SECTION (Amending WSR 01-16-125, filed 7/31/01, effective 10/24/01)

WAC 460-24A-210 Notice of complaint must be filed with director. ((~~Each licensed~~)) If you are an investment adviser registered or required to be registered pursuant to RCW 21.20.040 who has filed a complaint against any of ((~~its~~)) your partners, officers, directors, agents licensed in Washington or associated persons with any law enforcement agency, any other regulatory agency having jurisdiction over the securities industry, or with any bonding company regarding any loss arising from alleged acts of such person, you shall send a copy of such complaint to the director, within ten days following its filing with such other agency or bonding company.

AMENDATORY SECTION (Amending WSR 08-14-006, filed 6/19/08, effective 7/20/08)

WAC 460-24A-220 Unethical business practices—Investment advisers and federal covered advisers. ((~~A person who is~~)) If you are an investment adviser, investment adviser representative, or a federal covered adviser ((~~is~~)), you are a fiduciary and ((~~has~~)) have a duty to act primarily for the benefit of ((~~its~~)) your clients. If you are a federal covered

adviser, the provisions of this subsection apply ((~~to federal covered advisers~~)) to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290). While the extent and nature of this duty varies according to the nature of the relationship with the client and the circumstances of each case, in accordance with RCW 21.20.020 (1)(c) and 21.20.110 (1)(g) ((~~an investment adviser or a federal covered adviser~~)) you shall not engage in dishonest or unethical business practices((~~,~~)) including, but not limited to, the following:

(1) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser, investment adviser representative, or federal covered investment adviser.

(2) Exercising any ((~~discretionary power~~)) discretion in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the ((~~discretionary power~~)) discretion relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

(3) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account in light of the fact that an investment adviser, investment adviser representative, or federal covered adviser in such situations can directly benefit from the number of securities transactions effected in a client's account. The rule appropriately forbids an excessive number of transaction orders to be induced by an adviser for a "customer's account."

(4) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(5) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

(6) Borrowing money or securities from a client unless the client is a broker-dealer, ((~~an~~)) your affiliate ((~~of the investment adviser~~)), or a financial institution engaged in the business of loaning funds.

(7) Loaning money or securities to a client unless ((~~the investment adviser is~~)) you are a financial institution engaged in the business of loaning funds or the client is ((~~an~~)) your affiliate ((~~of the investment adviser~~)).

(8) ((~~To misrepresent~~)) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative, federal covered adviser, or any employee((~~s of the investment adviser~~)), or person affiliated with the investment adviser, or ((~~to misrepresent~~)) misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(9) Providing a report or recommendation to any advisory client prepared by someone other than ((~~the adviser~~)) you without disclosing that fact. (This prohibition does not apply to a situation where ((~~the adviser~~)) you use((~~s~~)) published research reports or statistical analyses to render advice or where ((~~an adviser~~)) you order((~~s~~)) such a report in the normal course of providing service.)

(10) Charging a client an unreasonable advisory fee.

(11) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser, investment adviser representative, federal covered adviser, or any ((~~of its~~)) employees or affiliated persons thereof which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(a) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(b) Charging a client an advisory fee for rendering advice when ((~~a commission~~)) compensation for ((~~executing~~)) effecting securities transactions pursuant to such advice will be received by the investment adviser, investment adviser representative, federal covered investment adviser, or ((~~its~~)) employees or affiliated persons thereof.

(12) Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.

(13) Publishing, circulating or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940.

(14) Disclosing the identity, ((~~affairs, or~~)) investments, or other financial information of any client or former client unless required by law to do so, or unless consented to by the client.

(15) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where ((~~the investment adviser has~~)) you have custody or possession of such securities or funds when the ((~~adviser's~~)) action of the investment adviser, federal covered adviser, or investment adviser representative or employee is subject to and does not comply with ((~~the~~)) applicable custody requirements ((~~of Reg. 206(4)-2 under the Investment Advisers Act of 1940~~)).

(16) Entering into, extending or renewing any investment advisory contract ((~~unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract~~)) that does not comply with the requirements set forth in WAC 460-24A-130.

(17) Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the pro-

visions of Section 204A of the Investment Advisers Act of 1940.

(18) Entering into, extending, or renewing any advisory contract contrary to the provisions of section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers and investment adviser representatives registered or required to be registered under the Securities Act of Washington, chapter 21.20 RCW, notwithstanding whether ((~~such adviser~~)) you would be exempt from federal registration pursuant to section 203(b) of the Investment Advisers Act of 1940.

(19) To indicate, in an advisory contract, any condition, stipulation, or provisions binding any person to waive or limit compliance with, or require indemnification for any violations of, any provision of the Securities Act of Washington, chapter 21.20 RCW, or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of section 215 of the Investment Advisers Act of 1940.

(20) Engaging in any act, practice, or course of business which is fraudulent, deceptive, ((~~or~~)) manipulative ((~~contrary to the provisions of section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under section 203 of the Investment Advisers Act of 1940~~)) or unethical.

(21) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Securities Act of Washington, chapter 21.20 RCW, or any rule or regulation thereunder.

(22) Using any term or abbreviation thereof in a manner that misleadingly states or implies that a person has special expertise, certification, or training in financial planning, including, but not limited to, the misleading use of a senior-specific certification or designation as set forth in WAC 460-25A-020.

(23) Making, in the solicitation of clients, any untrue statement of fact, or omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which they are made, not misleading.

The conduct set forth above is not inclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices shall be deemed an unethical business practice. The federal statutory and regulatory provisions referenced herein shall apply to investment advisers, investment adviser representatives, and federal covered advisers, to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 460-24A-058	Completion of filing.

WSR 13-08-001
PROPOSED RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed March 20, 2013, 3:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-23-001.

Title of Rule and Other Identifying Information: Chapter 392-135 WAC addresses the creation of interdistrict cooperation programs. The chapter establishes the conditions pursuant to which school districts may cooperate in interdistrict tuition-free education programs including, but not limited to, vocational and handicapped programs.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Wanamaker Conference Room, 600 Washington Street S.E., Olympia, WA 98504, on May 8, 2013, at 10:00 a.m.

Date of Intended Adoption: May 9, 2013.

Submit Written Comments to: T. J. Kelly, P.O. Box 47200, Olympia, WA 98504-7200, e-mail thomas.kelly@k12.wa.us, fax (360) 664-3683, by May 8, 2013.

Assistance for Persons with Disabilities: Contact Wanda Griffin, TTY (360) 725-6270 or (360) 725-6132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The objective of this proposal is to remove the requirement of school districts to require approval from OSPI in order to operate an interdistrict cooperation program.

Reasons Supporting Proposal: To allow school districts to form interdistrict cooperation programs in a more efficient and time sensitive members [manner].

Statutory Authority for Adoption: RCW 28A.150.290 and 84.52.0531.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting and Implementation: T. J. Kelly, OSPI, Olympia, Washington, (360) 725-6301; and Enforcement: JoLynn Berge, OSPI, Olympia, Washington, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not subject to RCW 34.05.328 per subsection (5)(a)(1)[(i)]. Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

March 20, 2013
Randy Dorn
State Superintendent

AMENDATORY SECTION (Amending Order 7-75, filed 12/22/75)

WAC 392-135-015 Program types. ((~~Subject to the prior approval of the superintendent of public instruction,~~)) Any school district may cooperate with one or more other school districts in the joint maintenance and operation of educational programs or services:

(1) As a part of the operation of a joint facility, or otherwise; and

(2) On a full- or part-time attendance basis, or a regular 180-day or extended school year basis.

AMENDATORY SECTION (Amending Order 81-21, filed 9/18/81)

WAC 392-135-020 ((~~Application—Requirements for approval.~~)) Interdistrict cooperation contracts. (1) ((~~Application. The proposed serving district shall be the applicant school district. The applicant school district shall submit a written application for the operation of an interdistrict cooperation program and the proposed written agreement(s) to be entered into by each participating school district to the superintendent of public instruction, division of financial services.~~)) An interdistrict cooperation contract shall be agreed upon by each participating school district and include and set forth at least the following:

(a) A description of the services and program.

(b) The number of students to be served from each district.

(c) The estimated amount of any operating costs of the program that are not funded from state or federal sources and the method of sharing such unfunded costs.

(2) ((~~Requirements for approval consideration.~~)) Interdistrict cooperation programs ((~~eligible for consideration and approval by the superintendent of public instruction~~)) shall be:

(a) Voluntary.

(b) Tuition free.

(c) Necessary for the express purpose of:

(i) Providing educational programs not otherwise available; and/or

(ii) Avoiding unnecessary duplications of specialized or unusually expensive programs and facilities; and/or

(iii) Improving racial balance within and among school districts.

(d) Interdistrict cooperation contracts shall be approved in advance of the board of directors of each participating school district.

(e) Interdistrict cooperation contracts shall be retained by each participating school district, and shall be made available upon request for audit or review purposes.

AMENDATORY SECTION (Amending Order 81-21, filed 9/18/81)

WAC 392-135-021 Reporting requirements. (1) Each school district shall provide, upon request of the superintendent of public instruction, such data as the superintendent deems appropriate to identify the resident school district of all nonresident students enrolled in a school district cooperative program who are attending classes in a school district other than the school district in which the student is resident, excepting all high school students from nonhigh school districts.

(2) ((~~The superintendent of public instruction shall provide each serving district of each approved interdistrict cooperative with necessary report forms and shall advise each serving district of the due date established by the superintendent for the return of such completed report forms to the educational service districts or to the superintendent of public instruction as now or hereafter established by the superintendent and published in bulletins of the division of financial services.~~

(~~3~~)) Data required by this section shall be used by the superintendent of public instruction for the purposes of WAC 392-121-170 and chapter 392-139 WAC as now or hereafter amended.

AMENDATORY SECTION (Amending Order 18, filed 7/19/90, effective 8/19/90)

WAC 392-135-030 Cooperative financing of construction. Cooperative financing involving the construction of any educational facility and arrangements therefor pursuant to RCW 28A.335.160(1) shall be in compliance with ((~~state board of education~~)) regulations((~~, WAC 180-30-460 through 180-30-495~~)) established by the office of superintendent of public instruction in chapters 392-345 and 392-346 WAC, as now or hereafter amended.

WSR 13-08-004
PROPOSED RULES
DEPARTMENT OF TRANSPORTATION
[Filed March 21, 2013, 8:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-24-079.

Title of Rule and Other Identifying Information: New chapter 468-601 WAC, Leases with private entities for retail services at park and ride lots—Accommodations for local business.

Hearing Location(s): Transportation Building, Commission Boardroom, 310 Maple Park Avenue S.E., Olympia, WA 98504, on May 8, 2013, at 1:30 p.m.

Date of Intended Adoption: May 8, 2013.

Submit Written Comments to: Jeff Doyle, Director, Public-Private Partnerships, 310 Maple Park Avenue S.E., Olympia, WA 98504-7395, e-mail doylej@wsdot.wa.gov, by May 7, 2013.

Assistance for Persons with Disabilities: Contact Grant Heap by May 7, 2013, TTY (360) 705-7760.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New rules, statute directs the department to adopt and enforce such reasonable rules that are consistent with and necessary to carry out RCW 47.04.295 Park and ride lots—Leases with private entities authorized—Rules, including a flexible process to prioritize local business interests when entering into lease agreements.

Reasons Supporting Proposal: RCW 47.04.295 Park and ride lots—Leases with private entities authorized—Rules, directs the Washington state department of transportation (WSDOT) to adopt rules.

Statutory Authority for Adoption: RCW 47.04.295.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: New rules as directed by RCW 47.04.295 Park

and ride lots—Leases with private entities authorized—Rules. Chapter 468-601 WAC, Leases with private entities for retail services at park and ride lots—Accommodations for local business.

Name of Proponent: WSDOT, governmental.

Name of Agency Personnel Responsible for Drafting: Tonia Buell, Olympia, Washington, (360) 705-7439; Implementation and Enforcement: Jeff Doyle, Olympia, Washington, (360) 705-7023.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules will not result in a negative economic impact for small businesses. These rules provide accommodations for local business.

A cost-benefit analysis is not required under RCW 34.05.328. There are no additional costs required to implement these rules.

March 21, 2013
Stephen T. Reinmuth
Chief of Staff

Chapter 468-601 WAC

LEASES WITH PRIVATE ENTITIES FOR RETAIL SERVICES AT PARK AND RIDE LOTS—ACCOMMODATIONS FOR LOCAL BUSINESS

NEW SECTION

WAC 468-601-010 Leases with private entities. Washington state department of transportation (WSDOT) may enter into lease agreements with private entities allowing them to operate franchises for food or beverage services, restaurants, grocery and convenience stores, or other services that are of benefit to the traveling public at park and ride lots owned by the department if the following conditions are met:

• The leased property is not presently needed for highway purposes.

• The agreement contains such terms and conditions as will ensure that the leased property will be used in a manner that is not inconsistent with the functions and operations of the applicable park and ride lot.

• The agreement protects the state and the local transit agency from commercial harm or other type of harm.

• The department ensures it receives best value for use of the property by using a competitive procurement process or other reasonable manner to solicit proposals.

• The agreement provides that the state is compensated in legally sufficient amounts for the use of the underlying right of way; that oversight and management of the agreement is provided for; and that any remaining compensation is distributed as required by law including, but not limited to, RCW 47.04.295 and 47.66.070.

• The term of a concession contract will generally not exceed ten years, unless WSDOT determines that necessary construction or other capital improvements to be undertaken at the site warrant a longer term.

NEW SECTION

WAC 468-601-020 Competitive selection process. When entering into lease agreements with private vendors for retail concessionaire or franchise services at its park and ride lots, WSDOT shall conduct a competitive and transparent procurement process. The selection process shall comply with all applicable state laws and policies that govern WSDOT. All solicitation documents shall clearly indicate the process to be followed including, but not limed to, the following:

• Notification of solicitation via the Washington electronic business solution (WEBS) web site;

• Appointment of a procurement coordinator;

• A schedule of procurement activities;

• Proposer/submitter question and answer period;

• Public notification of apparently successful proposer/submitter;

• An optional proposer/submitter debrief; and

• Complaint and protest procedures.

NEW SECTION

WAC 468-601-030 Notification to local businesses. WSDOT shall make reasonable efforts to contact similar retail businesses within a one-fourth mile radius of the park and ride entrance, and shall provide a notice of proposed action for park and ride locations that are under consideration for retail operations. WSDOT shall give local businesses the opportunity and a meaningful amount of time to prepare and submit a compliant proposal through the competitive process.

NEW SECTION

WAC 468-601-040 Local business preference. Preference in competing for lease agreements shall be given to established local businesses. To be eligible for the preference, an established local business must be offering a similar product or service at a retail outlet that is located within a one-fourth mile radius of the entrance of the park and ride facility; and the retail outlet must have been in operation for at least one hundred twenty days prior to the scheduled solicitation date. A competitive procurement preference shall be granted in each of the following ways:

• The procurement process must allow for the established local retailer to be notified that WSDOT has received one or more letters from potential retailers indicating their intent to compete for a lease at the subject park and ride lot. Upon notification, the established local retailer shall be granted an opportunity to submit a proposal. The period of time allowed for the local retailer's submission of a compliant proposal shall not be less than the time allowed for other proposers to respond; and

• Eligible local businesses shall receive local preference scoring during the evaluation phase of the selection process. WSDOT shall add five percent of total possible points to the final scoring of the site proposal.

WSR 13-08-014
PROPOSED RULES
HORSE RACING COMMISSION
[Filed March 25, 2013, 10:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-04-019.

Title of Rule and Other Identifying Information: WAC 260-08-005 Horse racing commission—Composition—Duties.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on June 14, 2013, at 9:30 a.m.

Date of Intended Adoption: June 14, 2013.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail doug.moore@whrc.state.wa.us, fax (360) 459-6461, by June 11, 2013.

Assistance for Persons with Disabilities: Contact Patty Sorby by June 11, 2013, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Needs to be amended to comply with RCW 67.16.020 which changed the number of commissioners from five to three.

Reasons Supporting Proposal: To comply with statute.

Statutory Authority for Adoption: RCW 67.16.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: [Horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

March 25, 2013
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 05-05-049, filed 2/14/05, effective 3/17/05)

WAC 260-08-005 Horse racing commission—Composition—Duties. The horse racing commission, composed of ((~~five~~)) three members appointed by the governor, is responsible for licensing, regulating and supervising all horse racing meets in the state where the parimutuel system is used. The commission also approves and regulates satellite locations and simulcasting, and licenses and regulates advance deposit wagering. The commission functions through periodic public meetings and where required, conducts hearings in accordance with this chapter. Various commission employees, where required, assist the commission with the statutory duties and the enforcement of chapters 260-12 through 260-84 WAC.

WSR 13-08-015
PROPOSED RULES
HORSE RACING COMMISSION
[Filed March 25, 2013, 10:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-03-047.

Title of Rule and Other Identifying Information: WAC 260-12-180 Safety equipment required.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on June 14, 2013, at 9:30 a.m.

Date of Intended Adoption: June 14, 2013.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail doug.moore@whrc.state.wa.us, fax (360) 459-6461, by June 11, 2013.

Assistance for Persons with Disabilities: Contact Patty Sorby by June 11, 2013, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adds new entities that may establish minimum safety standards on equipment that have been approved by the ARCI.

Reasons Supporting Proposal: To update current industry standards.

Statutory Authority for Adoption: RCW 67.16.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: [Horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

March 25, 2013
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 07-11-114, filed 5/18/07, effective 6/18/07)

WAC 260-12-180 Safety equipment required. (1) When on association grounds, all persons on horseback must wear a securely fastened safety helmet that meets current standards for equipment designed and manufactured for use while riding horses as established by the American Society for Testing and Materials((~~/Safety Equipment Institute (ASTM/SEI), the British Standards Institute (BSI) or similar organization~~)) (ASTM 1163), UK Standards (EN-1384 and PAS-015); or, Australian/New Zealand Standard (AS/NZ 3838).

(2) All persons on horseback must wear a securely fastened safety vest that is designed to provide shock-absorbing protection of:

(a) ((~~"Level 1," as defined by the 2000 British Equestrian Trade Association (BETA) Horse Rider's Body and Shoulder~~

~~Protectors; or~~)) British Equestrian Trade Association (BETA):2000 Level 1.

(b) American Society for Testing and Materials((~~/Safety Equipment Institute (ASTM/SEI) standard F1937-04~~)) (ASTM 1163) F2681-08 or 1937 (Specification for Body Protectors Used in Horse Sports and Horseback Riding).

(c) Euro Norm (EN) 13158:2000 Level 1.

(d) Shoe and Allied Trade Research Association (SATRA) Jockey Vest Document M6 Issue 3.

(e) Australian Racing Board (ARB) Standard 1.1198.

(3) All persons on horseback must wear equestrian footwear that covers the rider's ankle with a minimum of a 1/2 inch heel, except jockeys while riding in a race who must wear jockey boots as required by WAC 260-32-100.

This rule does not apply to nonracing related events conducted for entertainment purposes. Safety equipment for such entertainment events shall be at the discretion of the racing association.

WSR 13-08-024
PROPOSED RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD
[Filed March 27, 2013, 10:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-09-070.

Title of Rule and Other Identifying Information: Amends WAC 181-79A-211 to require three-year teaching experience for a candidate for principal certification. Makes other technical corrections to the language.

Hearing Location(s): Coast Wenatchee Center Hotel, 201 North Wenatchee Avenue, Wenatchee, WA 98801, on May 16, 2013, at 8:30.

Date of Intended Adoption: May 16, 2013.

Submit Written Comments to: David Brenna, Old Capitol Building, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by May 9, 2013.

Assistance for Persons with Disabilities: Contact David Brenna by May 9, 2013, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Sets experience requirements and corrects language.

Reasons Supporting Proposal: Strengthens requirements; stakeholder.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No fiscal impact.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

March 27, 2013
David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 11-15-038, filed 7/13/11, effective 8/13/11)

WAC 181-79A-211 Academic and experience requirements for certification—Administrators. Candidates for the respective administrative certificate shall complete the following requirements in addition to those set forth in WAC 181-79A-150 and 181-79A-213.

(1) Superintendent.

(a) Initial.

(i) The candidate shall hold an approved master's degree and have completed subsequent to the baccalaureate degree at least forty-five quarter credit hours (thirty semester credit hours) of graduate level course work in education.

(ii) The candidate shall hold a valid teacher, educational staff associate, program administrator or principal certificate; excluding certificates issued under WAC 181-79A-231, or comparable out-of-state certificates.

(b) Continuing.

(i) The candidate shall hold an approved master's degree and have completed subsequent to the baccalaureate degree at least sixty quarter credit hours (forty semester credit hours) of graduate level course work in education or shall hold a doctorate in education.

(ii) The candidate shall hold a valid teacher, educational staff associate, program administrator or principal certificate; excluding certificates issued under WAC 181-79A-231, or comparable out-of-state certificates.

(iii) Candidates applying for continuing superintendent's certificate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(2) Principal.

(a) ((~~Initial.~~

~~(i) The candidate shall hold an approved master's degree and have completed an approved program for the preparation of principals.~~

~~(ii) The candidate shall have documented successful school-based experience in an instructional role with students.~~

~~(b)~~)) Residency.

(i) The candidate shall hold an approved master's degree.

(ii) The candidate shall have completed an approved program for the preparation of principals.

(iii) The candidate shall have three years of documented successful school-based experience in an instructional role with students; provided, candidates who were enrolled in an approved principal program prior to July 1, 2013, are not subject to the three-year minimum experience requirement.

(((~~iii~~))) (iv) The candidate shall ((~~have~~)) hold or have held:

(A) A valid teacher's certificate, excluding certificates issued under WAC 181-79A-231; or

(B) A valid education staff associate certificate, excluding certificates issued under WAC 181-79A-231.

(((~~(iv)~~))) (v) Persons whose teacher of educational staff associate certificates were revoked, suspended or surrendered are not eligible for principals certificates.

(((~~(c)~~))) (b) Continuing.

(i) ((~~The candidate who holds a valid initial principal's certificate issued prior to August 31, 1998, shall hold an approved master's degree and completed subsequent to the baccalaureate degree at least forty-five hours (thirty semester hours) of graduate level course work in education or shall hold a doctorate in education.~~

~~(ii)~~)) The candidate ((~~who applies on or after August 31, 1998,~~)) shall hold a valid initial principal's certificate, an approved master's degree and shall have completed at least fifteen quarter (ten semester) credit hours of graduate course work offered by a college or university with a state approved principal program or one hundred fifty clock hours of study, which meet the state continuing education clock hour criteria pursuant to chapter 181-85 WAC, or a combination of credits and clock hours equivalent to the above. Such study shall:

(A) Be based on the principal performance domains included in WAC 181-78A-270 (2)(a) or (b);

(B) Be taken subsequent to the issuance of the initial principal's certificate; and

(C) Be determined in consultation with and approved by the candidate's employer or the administrator of a state approved principal preparation program.

(((~~(iii)~~))) (ii) Provided, That a candidate who held a valid initial principal's certificate on August 31, 1998, may meet the academic requirement for the continuing certificate described in WAC 181-79A-211 (2)(c)(i), if the candidate meets requirements for and applies for the continuing certificate by the expiration date on that initial certificate.

(((~~(iv)~~))) (iii) The candidate must meet requirements for a principal's certificate pursuant to WAC 181-79A-150(4).

(((~~(v)~~))) (iv) Candidates applying for the continuing principal's certificate ((~~shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer. Candidates applying for the continuing principal's certificate on or after August 31, 1998,~~)) shall provide documentation of three contracted school years of full-time employment as a principal or assistant principal.

(((~~(vi) Provided, That a candidate who held a valid initial principal's certificate on August 31, 1998, may meet the one hundred eighty day experience requirement described in WAC 181-79A-211 (2)(c)(v), if that candidate meets requirements and applies for the continuing certificate by the expiration date on that initial certificate.~~

~~(d)~~)) (c) Professional certificate.

(i) The candidate shall have completed an approved professional certificate program.

(ii) The candidate shall have documentation of three contracted school years of employment as a principal or assistant principal.

(3) Program administrator.

(a) Initial.

The candidate shall hold an approved master's degree and have completed subsequent to the baccalaureate degree at least twenty-four quarter credit hours (sixteen semester credit hours) of graduate level course work in education.

(b) Residency certificate.

The candidate shall hold an approved master's degree and have completed an approved program for the preparation of program administrators.

(c) Continuing.

(i) The candidate shall hold a valid initial program administrator's certificate, an approved master's degree and have completed subsequent to the baccalaureate degree at least thirty quarter credit hours (twenty semester credit hours) of graduate level course work in education or shall hold a doctorate in education.

(ii) Candidates applying for continuing program administrator's certificate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(d) Professional certificate.

The candidate shall have completed an approved professional certificate program.

WSR 13-08-026
WITHDRAWAL OF PROPOSED RULES
HORSE RACING COMMISSION
[Filed March 27, 2013, 11:31 a.m.]

The Washington horse racing commission would like to withdraw from publication our proposed rule making (CR-102), WSR 13-04-048, filed on February 1, 2013.

Douglas L. Moore
Executive Secretary

WSR 13-08-027
PROPOSED RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD
[Filed March 27, 2013, 11:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-10-001.

Title of Rule and Other Identifying Information: Amends WAC 181-79A-251 to provide for extensions to school psychologist expiring certificates due to the only state-approved provider ceasing operations. Technical corrections.

Hearing Location(s): Coast Wenatchee Center Hotel, 201 North Wenatchee Avenue, Wenatchee, WA 98801, on May 16, 2013, at 8:30.

Date of Intended Adoption: May 16, 2013.

Submit Written Comments to: David Brenna, Old Capitol Building, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by May 9, 2013.

Assistance for Persons with Disabilities: Contact David Brenna by May 9, 2013, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2012, the state's only school psychologist certificate program announced its closure. Candidates with expiring residency certificates cannot receive their second tier certificate until the program is replaced. This change provides for a one-time extension until the new program begins operations.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No fiscal impact.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

March 27, 2013
David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 13-04-082, filed 2/5/13, effective 3/8/13)

WAC 181-79A-251 Residency and professional certification. Renewal and reinstatement.

(1) Residency certificate. Residency certificates shall be renewed under one of the following options:

(a) Teachers.

(i) Individuals who hold, or have held, residency certificates have the following options for renewal past the first three-year certificate:

(A) Candidates who have attempted and failed the professional certificate assessment are eligible for a two-year renewal;

(B) Candidates who have not been employed or employed less than full-time as a teacher during the dated, three-year residency certificate may receive a two-year renewal by submitting an affidavit to the certification office confirming that they will register and submit a uniform assessment portfolio or may permit their certificate to lapse until such time they register for the professional certificate assessment;

(C) Candidates whose three-year residency certificate has lapsed may receive a two-year renewal by submitting an affidavit to the certification office confirming that they will register and submit a uniform assessment portfolio for the professional certificate assessment;

(D) Individuals who complete a National Board Certification assessment but do not earn National Board Certification, may use that completed assessment to renew the residency certificate for two years.

(ii) A residency certificate expires after the first renewal if the candidate has not registered for and submitted a portfolio assessment prior to June 30th of the expiration year, to achieve the professional certificate, provided: When the first two-year renewal on residency certificates expires, teachers have two renewal options:

(A) Teachers who were employed but failed the professional certification assessment, may receive a second two-year renewal;

(B) Teachers who were unemployed or employed less than full-time during the first two-year renewal may permit their certificate to lapse and receive a second two-year renewal by submitting an affidavit to the certification office confirming that they will register and submit a uniform assessment portfolio for the professional certification assessment.

(C) An individual who completes a National Board Certification assessment but does not earn National Board Certification, may use that completed assessment to renew the residency certificate for two years in lieu of submitting an affidavit to the certification office confirming that they will register and submit the Washington uniform assessment portfolio as per this section, WAC 181-79A-251.

(iii) Teachers who hold expired residency certificates may be reinstated by having a district request, under WAC 181-79A-231, a transitional certification not less than five years following the final residency expiration: Provided, That the teacher registers and passes the professional certification assessment within two years.

(iv) Teachers that hold a dated residency certificate prior to September 2011 that have expiration dates past September 2011 are subject to the same renewal options as described in (a)(ii) and (iii) of this subsection.

(b) Principals/program administrators.

(i) Individuals who hold, or have held, a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (2)(a) may have the certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

(ii) Individuals who hold, or have held, residency certificates who do not qualify for enrollment in a professional certificate program under WAC 181-78A-535 (2)(a) may have their residency certificates renewed for an additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work, directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) from a regionally accredited institution of higher education taken since the issuance of the residency certificate.

(c) School counselors and school psychologists.

(i) Individuals who hold a residency certificate and who qualify for enrollment in a professional certificate program

pursuant to WAC 181-78A-535(3) may have the certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

(ii) Individuals who hold, or have held, a residency certificate who do not qualify for admission to a professional certificate program under WAC 181-78A-535 (3)(a) may have their residency certificates renewed for an additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work, directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) from a regionally accredited institution of higher education taken since the issuance of the residency certificate.

(iii) School psychologists in the process of obtaining the NCSP may apply for a one-time two-year renewal with verification of NCSP submission.

(iv) School psychologists with residency certificates dated to expire June 30, 2013, 2014, or 2015 may apply until June 30, 2016, for a one-time two-year extension.

(2) Professional certificate.

(a) Teachers.

(i) A valid professional certificate may be renewed for additional five-year periods by the completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC or by completing the professional growth plan as defined in WAC 181-79A-030. Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours: Provided, that professional certificates issued under rules prior to September 1, 2014, retain the option of clock hours or professional growth plans for renewal. An expired professional certificate issued under rules in effect prior to September 1, 2014, may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour requirement within the five years prior to the date of the renewal application. All continuing education credit hours shall relate to either (a)(i)(A) or (B) of this subsection: Provided, That both categories (a)(i)(A) and (B) of this subsection must be represented in the one hundred fifty continuing education credit hours required for renewal:

(A) One or more of the following three standards:

(I) Effective instruction.

(II) Professional contributions.

(III) Professional development.

(B) One of the salary criteria specified in WAC 392-121-262.

(ii) Individuals not employed as a teacher in a public school or approved private school holding a professional teaching certificate may have their professional certificate renewed for a five-year period by the completion of:

(A) Fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based leadership standards as defined in WAC 181-78A-540; or

(B) One hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-79A-207; or

(C) Beginning September 1, 2014, four professional growth plans developed annually during the period in which the certificate is valid in collaboration with the professional growth team as defined in WAC 181-79A-030 are required for renewal. The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-79A-207. Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours.

(iii) Provided, That a professional certificate may be renewed based on the possession of a valid teaching certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.

(b) Principals/program administrators.

(i) A professional certificate may be renewed for additional five-year periods for individuals employed as a principal, assistant principal or program administrator in a public school or approved private school by:

(A) Completion of four professional growth plans developed annually since the certificate was issued in collaboration with a minimum of three certificated colleagues that documents formalized learning opportunities and professional development activities that relate to the six standards and "career level" benchmarks defined in WAC 181-78A-540(1). Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours.

(B) Documented evidence of results of the professional growth plan on student learning.

(ii) Individuals not employed as a principal, assistant principal, or program administrator in a public school or approved private school may have their professional certificate renewed for a five-year period by the completion of:

(A) Fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based leadership standards as defined in WAC 181-78A-540(1) from a regionally accredited institution of higher education taken since the issuance of the professional certificate; or

(B) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-540(1); or

(C) Completion of four professional growth plans developed annually since the certificate was issued in collaboration with the professional growth team as defined in WAC 181-79A-030 that documents formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-78A-540(2). Individuals who complete the requirements

of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours.

(c) School counselors and school psychologists.

(i) For certificates issued under rules in effect prior to September 1, 2014, a valid professional certificate may be renewed for additional five-year periods ((~~for individuals employed as a school counselor or school psychologist in a public school, approved private school, or in a state agency which provides educational services to students~~)) by:

(A) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9);

(B) Completion of four professional growth plans that are developed annually since the certificate was issued in collaboration with a minimum of three certificated colleagues or supervisor, and that documents formalized learning opportunities and professional development activities that relate to the standards and career level benchmarks defined in WAC 181-78A-540(2). Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours; or

(C) An expired professional certificate issued under rules in effect prior to September 1, 2014, may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour requirement within the five years prior to the date of the renewal application.

(ii) Beginning September 1, 2014, a valid professional certificate may be renewed for additional five-year periods for individuals employed as a school counselor or school psychologist in a public school, approved private school, or in a state agency which provides educational services to students by completion of four professional growth plans developed annually since the certificate was issued in collaboration with the professional growth team as defined in WAC 181-79A-030 that documents formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-78A-540(2). Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours.

((~~(ii)~~)) (A) Individuals not employed as a school counselor or school psychologist in a public school or approved private school may have their professional certificate renewed for an additional five-year period by:

((~~(A)~~)) (B) Completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based standards as defined in WAC 181-78A-540(2) from a regionally accredited institution of higher education taken since the issuance of the professional certificate; or

((~~(B)~~)) (C) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-540(2);

((~~(C)~~)) (D) Completion of four annual professional growth plans developed since the certificate was issued in collaboration with the professional growth team as defined in WAC 181-79A-030 that documents formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-78A-540(2). Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours;

((~~(D)~~)) (E) An expired professional certificate issued under rules in effect after September 1, 2014, may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour requirement within the five years prior to the date of the renewal application.

(iv) Provided, That a school counselor professional certificate may be renewed based on the possession of a valid school counselor certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater; or

((~~(E)~~)) (v) Provided, That a school psychologist professional certificate may be renewed based on the possession of a valid national certified school psychology certificate issued by the national association of school psychologists at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the national certified school psychology certificate, whichever is greater.

(d) For educators holding multiple certificates in (a), (b), or (c) of this subsection, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 13-08-029
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed March 27, 2013, 12:05 p.m.]

Original Notice.

Expedited rule making—Proposed notice was filed as WSR 13-02-086.

Title of Rule and Other Identifying Information: WAC 458-16A-120 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Determining combined disposable income, this rule describes how an assessor determines a claimant's combined disposable income.

Hearing Location(s): Capital Plaza Building, 4th Floor Conference Room Lg (L&P), 1025 Union Avenue S.E., Olympia, WA 98504, on May 7, 2013, at 10:00 a.m.

Date of Intended Adoption: May 14, 2013.

Submit Written Comments to: Jay Jetter, e-mail JayJ@dor.wa.gov, P.O. Box 47453, Olympia, WA 98504-7453, fax (360) 534-1606, by May 7, 2013.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499 or Renee Cosare, (360) 725-7514, no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of revenue is proposing to amend WAC 458-16A-120 to recognize and incorporate recent legislation:

- 2012 - SHB 2056. This legislation changed the term "boarding home" to "assisted living facility" throughout the Revised Code of Washington;
- 2011 - SSB 5167. This made two changes to the property tax relief program for low-income seniors and disabled persons: (1) Eligibility requirements for disabled veterans are modified to reflect federal definitions of service-connected disability; and (2) a section requiring notice to taxpayers is changed to reflect the 2010 legislative changes to renewal filings.
- 2010 - E2SHB 1597. This made various technical corrections, including making two reference dates to federal law the same within the senior property tax relief law, and the department of revenue is allowed to update the reference by rule in a way that is consistent with the purpose. Also, the time period for exemption renewal is extended under the senior property tax relief program from four to six years, and recovery of back taxes is also allowed for up to five years if an exemption was based on erroneous information.

This rule was previously filed for amendment using the expedited rule-making process authorized by RCW 34.05.353. The department has elected to proceed using the standard rule-making process, and a CR-102 public hearing, to provide interested persons additional opportunity to comment on the proposed rule.

Copies of draft rules are available for viewing and printing on our web site at http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx.

Reasons Supporting Proposal: To update the rule to recognize recent legislation.

Statutory Authority for Adoption: RCW 84.36.389 and 84.36.865.

Statute Being Implemented: RCW 84.36.381, 84.36.383, and 84.36.385.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Jay M. Jetter, 1025 Union Avenue S.E., Suite #200, Olympia, WA, (360) 534-1405; Implementation and Enforcement: Kathy Beith, 1025 Union Avenue S.E. Suite #200, Olympia, WA, (360) 534-1403.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impose any new performance requirement or administrative burden on any small business not already required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. This is not a significant legislative rule as defined under RCW 34.05.328.

March 27, 2013
Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-16-078, filed 7/31/08, effective 8/31/08)

WAC 458-16A-120 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Determining combined disposable income. (1) **Introduction.** This rule describes how an assessor determines a claimant's combined disposable income.

(2) **Begin by calculating disposable income.** The assessor must determine the disposable income of the claimant, the claimant's spouse or domestic partner, and all cotenants. The assessor begins by obtaining a copy of the claimant's, the claimant's spouse's or domestic partner's, and any cotenant's federal income tax return. If the claimant, the claimant's spouse or domestic partner, or a cotenant does not provide a federal income tax return, the assessor must calculate disposable income from copies of other income documents (e.g., W-2, 1099-R, 1099-INT, etc.). The assessor may want to review the definitions of gross income, WAC 458-16A-110, and adjusted gross income, WAC 458-16A-115, to help calculate the combined disposable income for a claimant. These rules provide some guidance on how to determine adjusted gross income without copies of a federal income tax return. On the federal income tax return, the adjusted gross income is found on the front pages of Form 1040, Form 1040A, and Form 1040EZ. Even when a return is provided, an assessor may request copies of supporting documents to verify the amount of the claimant's combined disposable income.

(a) **Absent spouse or domestic partner.** When a spouse or domestic partner has been absent for over a year and the claimant has no knowledge of his/her spouse's or domestic partner's whereabouts or whether the spouse or domestic partner has any income or not, and the claimant has not received anything of value from the spouse or domestic partner or anyone acting on behalf of the spouse or domestic partner, the disposable income of the spouse or domestic partner is deemed to be zero for purposes of this exemption. The claimant must submit with the application a dated statement signed by the applicant under the penalty of perjury. This statement must state that more than one year prior to filing this application:

(i) The claimant's spouse or domestic partner has been absent;

(ii) The claimant has not and does not know the whereabouts of the claimant's spouse or domestic partner;

(iii) The claimant has not had any communication with the claimant's spouse or domestic partner;

(iv) The claimant has not received anything of value from the claimant's spouse or domestic partner or anyone acting on behalf of the claimant's spouse or domestic partner.

The statement must also agree to provide this income information if the claimant is able to obtain it anytime in the next ((~~four~~)) six years.

(b) **Form 1040EZ.** Generally, the adjusted gross income on Form 1040EZ represents the disposable income for the person or couple filing the return. However, that person's or couple's adjusted gross income as shown on the Form 1040EZ must be increased by the following amounts that are excluded from their adjusted gross income.

(i) **Gain from a sold residence.** Under certain circumstances, gain from a sold residence is added onto the seller's adjusted gross income. Since there is no federal form used for reporting the exclusion of capital gains from the sale of a principal residence, the exemption application asks if a home has been sold, whether the sale proceeds were reinvested in new principal residence, and the amount of capital gain from the sale.

(A) If the proceeds were reinvested in a new principal residence, the excluded capital gain reinvested in the new residence is ignored. The adjusted gross income on Form 1040EZ is not adjusted for any part of the excluded capital gain reinvested in the new residence.

(B) If the proceeds were not reinvested in a new principal residence or only a part of the proceeds were reinvested in a new principal residence, the amount of excluded capital gain that is not reinvested in a new principal residence is added onto the seller's adjusted gross income to determine the seller's disposable income. The assessor may accept the excluded capital gain amount claimed upon the application or request a copy of documents demonstrating the seller's basis in the property and the capital gain earned upon the sale.

(ii) **Interest received on state and municipal bonds.** Interest received on state or local government bonds is generally not subject to federal income tax. This tax exempt interest is marked "TEI" and reported on the Form 1040EZ. The tax-exempt interest is added onto the bond owner's federal adjusted gross income to determine the bond owner's disposable income.

(A) The assessor may ask a claimant whether the claimant, the claimant's spouse or domestic partner, or any cotenants own state or local government bonds. If the return does not show the tax exempt amount from the bond, the assessor may ask to see a copy of the Form 1099-INT (Interest Income).

(B) If the claimant does not have this form, the bond issuer should be able to tell the owner whether the interest is taxable. The issuer should also give the owner a periodic (or year-end) statement showing the tax treatment of the bond. If the income recipient invested in the bond through a trust, a fund, or other organization, that organization should give the recipient this information.

(iii) **Excluded military pay and benefits.** Military pay and benefits excluded from federal adjusted gross income, other than attendant-care and medical-aid payments, are added onto the adjusted gross income of the military personnel receiving the excluded military pay or benefits to determine that person's disposable income. Excluded military pay and benefits are discussed in more detail ((~~below~~)) in ((~~paragraph (c)~~)) (d)(vii) of this subsection.

(iv) **Veterans benefits.** Veterans benefits are added onto the veteran's adjusted gross income to determine the veteran's disposable income, except for:

(A) Attendant-care payments and medical-aid payments, defined as any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the Department of Veterans Affairs (VA);

(B) Disability compensation, defined as payments made by the Department of Veterans Affairs (VA) to a veteran because of service-connected disability. (RCW 84.36.383 (5)(f)(iii).)

(C) Dependency and indemnity compensation, defined as payments made by the Department of Veterans Affairs (VA) to a surviving spouse, child, or parent. (RCW 84.36.383 (5)(f)(iv).)

Veterans benefits are discussed in more detail ((~~below~~)) in ((~~paragraph (c)~~)) (d)(viii) of this subsection.

(c) **Form 1040A.** If a claimant provides a copy of a Form 1040A, the assessor calculates the disposable income for the person or couple filing the return by adding onto the adjusted gross income reported the items described below to the extent these items were excluded or deducted from gross income:

(i) **Gain from a sold residence.** The excluded capital gain from selling a principal residence to the extent that excluded gain was not reinvested in a new principal residence is added onto the seller's adjusted gross income to determine the seller's disposable income. The amount is reported on the exemption application. Refer to ((~~paragraph (a)~~)) (b)(i) ((~~above~~)) of this subsection for a more complete discussion of excluded capital gain upon a sold residence.

(ii) **Interest received on state and municipal bonds.** Interest received on state or local government bonds is generally not subject to federal income tax. The tax-exempt interest reported on Form 1040A is added back onto the bond owner's adjusted gross income to determine the bond owner's disposable income. Refer to ((~~paragraph (a)~~)) (b)(ii) ((~~above~~)) of this subsection for a more complete discussion of tax-exempt interest on state and municipal bonds.

(iii) **Pension and annuity receipts.** Any nontaxable pension and annuity amounts are added onto the recipient's adjusted gross income amount to determine the recipient's disposable income. The nontaxable pension and annuity amounts are the difference in the total pension and annuity amounts reported from the taxable amounts reported. If the total amount of the pension and annuity amounts are not reported on the return, the assessor may use a copy of the Form 1099-R (Distributions from Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc.) issued to the claimant, the claimant's spouse or domestic partner, or the cotenant to determine the total amount of pension and annuity amounts received. Pension and annuity amounts do not include distributions made from a traditional individual retirement account; and

(iv) **Federal Social Security Act and railroad retirement benefits.** Any nontaxable Social Security benefit or equivalent railroad retirement amount reported on Form

1040A is added onto the adjusted gross income of the person receiving these benefits to determine that person's disposable income. The nontaxable Social Security benefit or equivalent railroad retirement amount is the difference in the total Social Security benefits or equivalent railroad retirement amounts reported from the taxable amount reported. If the total amount of the Social Security benefit or equivalent railroad retirement amount is not reported on the return, the assessor may use a copy of the Form SSA-1099 or Form RRB-1099 issued to the claimant, the claimant's spouse or domestic partner, or the cotenant to determine the Social Security benefits or the railroad retirement benefits received.

(v) **Excluded military pay and benefits.** Military pay and benefits excluded from federal adjusted gross income, other than attendant-care and medical-aid payments, are added onto adjusted gross income of the military personnel receiving the excluded military pay or benefits to determine that person's disposable income. Excluded military pay and benefits are discussed ((~~below~~)) in ((~~paragraph (c)~~)) (d)(vii) of this subsection.

(vi) **Veterans benefits.** Veterans benefits are added back onto the veteran's adjusted gross income to determine the veteran's disposable income, except for:

(A) Attendant-care payments and medical-aid payments, defined as any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the Department of Veterans Affairs (VA);

(B) Disability compensation, defined as payments made by the Department of Veterans Affairs (VA) to a veteran because of service-connected disability. (RCW 84.36.383 (5)(f)(iii).)

(C) Dependency and indemnity compensation, defined as payments made by the Department of Veterans Affairs (VA) to a surviving spouse, child, or parent. (RCW 84.36.383 (5)(f)(iv).)

Veterans benefits are discussed ((~~below~~)) in ((~~paragraph (c)~~)) (d)(viii) of this subsection.

(d) **Form 1040.** If a claimant provides a copy of a Form 1040, the assessor calculates the disposable income for the person or couple filing the return by adding onto the reported adjusted gross income all the items described below to the extent these items were excluded or deducted from gross income:

(i) **Gain from a sold residence.** The excluded capital gain from selling a principal residence to the extent that excluded gain was not reinvested in a new principal residence is added onto the seller's adjusted gross income to determine the seller's disposable income. The excluded capital gain amount is reported on the exemption application.

(ii) **Capital gains.** If the return shows capital gains or losses, the assessor examines a copy of the following schedule or forms, if any, that were filed with the return. The assessor should examine the capital gains reported on Schedule D (Capital Gains and Losses) and on Forms 4684 (Casualty and Thefts), 4797 (Sales of Business Property), and 8829 (Business Use of Home).

The assessor adds onto the adjusted gross income any amount of capital gains reduced by losses or deductions on the schedules or forms listed above to determine the total capital gains. The amount of capital gains that were excluded or deducted from adjusted gross income must be added onto that adjusted gross income to determine disposable income.

(iii) **Losses.** Amounts deducted for loss are added onto the adjusted gross income to determine the disposable income. Most losses are reported on the return in parentheses to reflect that these loss amounts are to be deducted. The net losses are reported on Form 1040 as business losses, as capital losses, as other losses, as rental or partnership-type losses, and as farm losses. Add these amounts in parentheses onto the adjusted gross income. In addition, the assessor adds to adjusted gross income the amount reported as a penalty on early withdrawal of savings because the amount represents a loss under section 62 of the Internal Revenue Code.

(A) The taxpayer only reports the net amount of losses on the front page of the Form 1040 federal income tax return. A loss may be used on other schedules or forms to reduce income before being transferred to the front page of the return to calculate adjusted gross income. The assessor adds onto the adjusted gross income the amount of losses used to reduce income on these other schedules and forms. ((~~If the assessor has already added capital gains reduced by losses, the assessor does not add this amount onto adjusted gross income as it has already been accounted for.~~)) The amount of losses that were used to reduce adjusted gross income must be added onto that adjusted gross income to determine disposable income. For example, the claimant reports on the front page of the 1040 a capital loss of (five thousand dollars). The assessor examines the Schedule D. On the Schedule D, the claimant reports two thousand dollars in long-term capital gains from the sale of Company X stock and seven thousand dollars in long-term capital losses from the sale of an interest in the Y limited partnership. The assessor has already ((~~reduced the claimant's adjusted gross income by~~)) added the five thousand dollars from the net capital loss reported on the front page of the return. The assessor would add onto adjusted gross income only the additional two thousand dollars in losses from this Schedule D that was used to offset the capital gain the claimant earned from the sale of Company X stock.

(B) The assessor should examine losses reported on Schedules C (Profit or Loss from Business), D (Capital Gains and Losses), E (Supplemental Income and Loss), F (Profit or Loss from Farming), and K-1 (Shareholder's Share of Income, Credits, Deductions, etc.), and on Forms 4684 (Casualty and Thefts), 4797 (Sales of Business Property), 8582 (Passive Activity Loss Limitations), and 8829 (Business Use of Home) to determine the total amount of losses claimed.

(iv) **Depreciation.** Amounts deducted for the depreciation, depletion, or amortization of an asset's costs are added onto the adjusted gross income to determine the disposable income. This includes section 179 expenses, as an expense in lieu of depreciation. Amounts deducted for depreciation, depletion, amortization, and 179 expenses may be found on Schedules C, C-EZ, E, F, K and K-1, and on Form 4835 (Farm Rental Income and Expenses). If the schedule or form results in a loss transferred to the front of the Form 1040 federal income tax return, the depreciation deduction to the extent it is represented in that loss amount should not be

added onto the adjusted gross income (as this would result in it being added back twice);

(v) **Pension and annuity receipts.** Any nontaxable pension and annuity amounts are added onto the recipient's adjusted gross income amount to determine the recipient's disposable income. The nontaxable pension and annuity amounts are the difference ((~~in~~)) between the total pension and annuity amounts reported ((~~from~~)) and the taxable amounts reported. If the total ((~~amount of the~~)) pension and annuity amounts are not reported on the return, the assessor may use a copy of the Form 1099-R (Distributions from Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc.) issued to the claimant, the claimant's spouse or domestic partner, or the cotenant to determine the total ((~~amount of~~)) pension and annuity amounts received. Pension and annuity amounts do not include distributions made from a traditional individual retirement account.

(vi) **Federal Social Security Act and railroad retirement benefits.** Any nontaxable Social Security benefit or equivalent railroad retirement amount reported on the Form 1040 federal income tax return is added onto the adjusted gross income of the person receiving these benefits to determine that person's disposable income. The nontaxable Social Security benefit or equivalent railroad retirement amount is the difference ((~~in~~)) between the total Social Security benefits or equivalent railroad retirement amounts reported ((~~from~~)) and the taxable amounts reported. If the total amount of the Social Security benefit or equivalent railroad retirement amount is not reported on the return, the assessor may use a copy of the Form SSA-1099 or Form RRB-1099 issued to the claimant, the claimant's spouse or domestic partner, or the cotenant to determine the Social Security benefits or the railroad retirement benefits received.

(vii) **Excluded military pay and benefits.** Military pay and benefits excluded from federal adjusted gross income, other than pay or benefits for attendant care or medical aid, are added onto the adjusted gross income of the military personnel receiving the military pay or benefits to determine that person's disposable income. Excluded military pay and benefits are not reported on the Form 1040. Excluded military pay and benefits such as pay earned in a combat zone, basic allowance for subsistence (BAS), basic allowance for housing (BAH), and certain in-kind allowances, are reported in box 12 of the Form W-2. The claimant should disclose when excluded military pay and benefits were received and provide copies of the Form W-2 or other documents that verify the amounts received.

(viii) **Veterans benefits.** Federal law excludes from gross income any veterans benefits payments, paid under any law, regulation, or administrative practice administered by the Department of Veterans Affairs (VA). To determine disposable income, allowances or payments made from the VA must be added on the veteran's adjusted gross income, except for:

(A) Attendant-care payments and medical-aid payments, defined as any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the Department of Veterans Affairs (VA);

(B) Disability compensation, defined as payments made by the Department of Veterans Affairs (VA) to a veteran because of service-connected disability. (RCW 84.36.383 (5)(f)(iii).)

(C) Dependency and indemnity compensation, defined as payments made by the Department of Veterans Affairs (VA) to a surviving spouse, child, or parent. (RCW 84.36.383 (5)(f)(iv).)

VA benefits are not reported on the Form 1040. The claimant should disclose when excluded veterans benefits were received and provide copies of documents that verify the amount received. ((~~Attendant-care and medical-aid payments are any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the VA;~~))

(ix) **Dividend receipts.** Exempt-interest dividends received from a regulated investment company (mutual fund) are reported on the tax-exempt interest line of the Form 1040 and added onto the recipient's adjusted gross income to determine that recipient's disposable income.

(A) The assessor may ask a claimant whether the claimant, the claimant's spouse or domestic partner, or any cotenants have received exempt-interest dividends.

(B) Generally, the mutual fund owner will receive a notice from the mutual fund telling him or her the amount of the exempt-interest dividends received. These exempt-interest dividends are not shown on Form 1099-DIV or Form 1099-INT. Although exempt-interest dividends are not taxable, the owner must report them on the Form 1040 tax return if he or she has to file; and

(x) **Interest received on state and municipal bonds.** Interest received on state or local government bonds is generally not subject to federal income tax. This tax-exempt interest is reported on the Form 1040 and added onto the bond owner's adjusted gross income to determine the bond owner's disposable income.

(3) **Calculate the combined disposable income.** When the assessor has calculated the disposable income for the claimant, the claimant's spouse or domestic partner, and any cotenants, the assessor combines the disposable income of these people together. The assessor reduces this combined income by the amount paid by the claimant or the claimant's spouse or domestic partner during that calendar year for their legally prescribed drugs, home health care; nursing home, ((~~boarding home~~)) assisted living facility, or adult family home expenses; and health care insurance premiums for medicare under Title XVIII of the Social Security Act to calculate the claimant's combined disposable income.

WSR 13-08-032
PROPOSED RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed March 27, 2013, 12:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-04-028.

Title of Rule and Other Identifying Information: WAC 392-122-423 and 392-122-424, full-day kindergarten program.

Hearing Location(s): Office of Superintendent of Public Instruction, Wanamaker Conference Room, Old Capitol Building, 600 South Washington, Olympia, WA, on May 8, 2013, at 10:30 a.m.

Date of Intended Adoption: May 9, 2013.

Submit Written Comments to: Becky McLean, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, e-mail becky.mclean@k12.wa.us, fax (360) 664-3631, by May 8, 2013.

Assistance for Persons with Disabilities: Contact Wanda Griffin by May 1, 2013, TTY (360) 664-3631 or (360) 725-6270.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 392-122-423 and 392-122-424 require updating to address the following:

- Update the eligibility determination for schools to qualify for state funded full-day kindergarten programs.
- Update the funding process for state funded full-day kindergarten programs.

Statutory Authority for Adoption: RCW 28A.150.290 (1).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Office of superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Becky McLean, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6306; Implementation: T. J. Kelly, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6301; and Enforcement: JoLynn Berge, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328.

March 27, 2013
Randy Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 09-11-018, filed 5/8/09, effective 6/8/09)

WAC 392-122-423 Full-day kindergarten program—Determination of eligibility. Determination for eligibility for full-day kindergarten (FDK) programs is based on an individual school's poverty percentage from the prior school year.

(1) ((~~By June 1st each~~)) Two weeks after the legislature adopts the state Operating Appropriations Act for the subsequent school year, the superintendent of public instruction shall develop and publish an eligibility list for FDK for the subsequent school year, pursuant to the legislative limitation parameters in the annual budget bill ((~~to include the specified percentage of kindergarten students to be served; which shall be further limited to the estimated annual funding for the full-day kindergarten program, as provided for in the state Operating Appropriations Act~~)). Should the governor veto all or a portion of the funding for FDK, the superintendent of public instruction shall modify the eligibility list as needed.

(2) A school's poverty percentage is determined ((~~as the higher of the following items as reported for October of the previous year:~~

~~(a) FRPL reported to child nutritional services at the superintendent of public instruction; or~~

~~(b) FRPL reported in the core student records system; or~~

~~(c) The percentage of students who qualify as a low-income student based on information provided by the school district that satisfies the requirements established in WAC 392-100-101(2) for those school districts that do not participate in the National School Lunch Program~~)) by the school's free and reduced priced lunch percentage eligibility for students in kindergarten through sixth grade from the prior school year's October 1st CEDARS report as of March 31st.

(3) Funding amounts per school shall be calculated in accordance with the state Operating Appropriations Act and WAC 392-121-400.

(((~~(4) School districts shall receive funding for eligible schools as follows:~~

~~(a) For September through December the additional FDK funding amount shall be calculated based upon one-half of the projected FDK enrollment submitted in the annual approved application.~~

~~(b) Commencing with the January payment funding shall be based upon the year to date (YTD) average FDK enrollment reported by the district less one-half of the YTD average FDK reported headcount.~~

~~(c) The remaining one half of the YTD average FDK reported headcount will be paid under guaranteed entitlement funding on the Report 1191.~~))

AMENDATORY SECTION (Amending WSR 09-11-018, filed 5/8/09, effective 6/8/09)

WAC 392-122-424 Full-day kindergarten program—((~~Applications~~)) Letter of acceptance and approvals. (1) School districts with eligible schools that intend to provide a FDK program shall submit ((~~an application~~)) a letter of acceptance to the superintendent of public instruction in accordance with a timeline established by the superintendent of public instruction. This ((~~application~~)) letter of acceptance must include the following:

(((~~(1)~~))) (a) Assurances that the school shall comply with all program requirements outlined in RCW 28A.150.315(1);

(((~~(2)~~))) (b) Assurances that the district can provide the full-day kindergarten program for all children of parents who request it in each eligible school ((~~for which the district is including in their application (ref: Section 511(14), chapter 329, Laws of 2008);~~

~~(3) A projected estimate of full-day kindergarten enrollment for each applicant school for the application year~~)); and

(((~~(4)~~))) (c) Any other requirements as established by the office of superintendent of public instruction.

(2) The superintendent shall approve the letters of acceptance that have met the requirements in subsection (1) of this section. If, after approving all of the letters of acceptance that were received that met the requirements in subsection (1) of this section, the superintendent determines that additional funding will be available, the superintendent shall notify school districts with schools that have the next highest levels of free and reduced price lunch eligibility that they are eligible.

(3) The eligibility for FDK is determined based upon an individual building's student poverty and may not transfer to other buildings or students within the district.

WSR 13-08-041
PROPOSED RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed March 28, 2013, 10:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-23-002.

Title of Rule and Other Identifying Information: Chapter 392-700 WAC, Dropout reengagement.

Hearing Location(s): Office of Superintendent of Public Instruction, Old Capitol Building, Brouillet Conference Room, 600 South Washington, Olympia, WA, on May 9, 2013, at 1:00 p.m.

Date of Intended Adoption: May 10, 2013.

Submit Written Comments to: Becky McLean, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, e-mail becky.mclean@k12.wa.us, fax (360) 664-3631, by May 9, 2013.

Assistance for Persons with Disabilities: Contact Wanda Griffin by May 5, 2013, TTY (360) 664-3631 or (360) 725-6270.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 392-700 WAC requires updating to address the following:

- Adjust the AAFTE averaging calculation due to the new June enrollment reporting requirement,
- Remove language of standard and nonstandard school year,
- Clarify program development issues, and
- Update language to align with existing apportionment WACs.

Statutory Authority for Adoption: RCW 28A.175.100.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Office of superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Becky McLean, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6306; Implementation: T. J. Kelly, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6301; and Enforcement: JoLynn Berge, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328.

March 28, 2013
Randy Dorm
State Superintendent

AMENDATORY SECTION (Amending WSR 11-17-045, filed 8/11/11, effective 9/11/11)

WAC 392-700-001 Purpose and authority. (1) The purpose of this chapter is to provide a statutory framework for a statewide dropout reengagement system and to provide appropriate educational opportunities and access to services for students age sixteen to twenty-one who have dropped out of high school or are not accumulating sufficient credits to reasonably complete a high school diploma in a public school before the age of twenty-one.

(2) Authority for this chapter is RCW 28A.175.100, which authorizes the superintendent of public instruction to adopt rules and procedures for statewide dropout reengagement programs (hereafter called program).

AMENDATORY SECTION (Amending WSR 11-17-045, filed 8/11/11, effective 9/11/11)

WAC 392-700-015 Definitions. The following definitions in this section apply throughout this chapter:

(1) **"Agency"** means an educational service district, nonprofit community-based organization, or public entity other than a ((~~community or technical~~)) college.

(2) **"Annual ((~~student~~)) average full-time equivalent (AAFTE)"** means the total student full-time equivalent (FTE) reported for each enrolled student in a school year divided by ((~~nine~~)) ten with the maximum being 1.0 per year.

((~~"Average annual full-time equivalent (AAFTE)" means the sum total of the annual student full-time equivalents (AFTEs) reported for a reengagement program divided by the total number of enrolled students in the program.~~))

(3) **"CEDARS"** refers to comprehensive educational data and ((~~resource~~)) research system, the statewide longitudinal data system of educational data for K-12 student information.

(4) **"College"** means community college or technical college.

(5) **"Consortium"** means a regional group of organizations that will consist of ((~~school~~)) districts, and agencies and/or colleges who agree to work together to create and operate a ((~~reengagement~~)) program ((~~or reengagement programs~~)) that will serve students from multiple ((~~school~~)) districts and reduce the administrative burden on ((~~school~~)) districts.

(6) **"Consortium agreement"** means:

(a) The agreement that is signed by the consortium lead and all ((~~school~~)) districts which are part of the consortium and agree to refer eligible students to the consortium's ((~~reengagement~~)) program((~~s~~)). This agreement will clearly outline the responsibilities of the consortium lead and those of the

referring ((school)) districts((. A model consortium agreement with standard language will be provided by OSPI)); or

(b) The agreement that is signed by a ((school)) district or ((technical)) college that is directly operating a ((reengagement)) program and all ((school)) districts which agree to refer eligible students to the program. This agreement will clearly outline the responsibilities of the ((technical)) college or ((school)) district directly operating the program and those of the referring ((school)) districts. ((A model consortium agreement with standard language will be provided by OSPI.))

(7) **"Consortium lead"** means the lead organization in a consortium that will assume the responsibilities outlined in WAC ((392-700-225 (4)(d))) 392-700-042.

(8) **"Contract"** means the document signed by the administrator of a ((school)) district and the administrator of an agency (((educational service district, community-based organization, or public entity other than a college or technical college))) when the program is operated by an agency ((agrees to operate a reengagement program)) on behalf of the district and will receive compensation ((for doing so)) in accordance with WAC 392-700-165. The contract will specifically outline all the required elements of a ((reengagement)) program (((as stated in this chapter))) that the agency and the ((school)) district ((are agreeing)) agree to implement. ((A model contract containing standard language will be provided by OSPI and may be used by the school district when requesting OSPI approval of their program as a reengagement program.))

(9) **"Credential"** ((means a GED,)) is identified as one of the following:

(a) High school equivalency certificate;

(b) High school diploma((,));

(c) College certificate received after completion of a college program requiring at least forty hours of instruction((, a));

(d) College degree((,)); or ((an))

(e) Industry recognized certificate of completion of training or licensing received after completion of a program requiring at least forty hours of instruction.

(10) **"Enrolled student"** is ((a)) an eligible student ((who)) whose enrollment and attendance meets ((all)) the criteria adopted by the office of superintendent of public instruction (OSPI) specifically for the program and outlined in WAC ((392-700-045)) 392-700-035 and 392-700-160, and is reported ((for student FTE)) as an FTE for state funding.

(11) **"ERDC"** refers to education research and data center, which conducts analyses of early learning, K-12, and higher education programs and education issues across the P-20 system that collaborates with legislative evaluation and accountability program and other statutory partner agencies.

(12) **"Full-time equivalent (FTE)** ((**eligible student" means**))**"** is the measurement of enrollment that an ((eligible)) enrolled student ((whose enrollment and attendance meets criteria adopted by the office of superintendent of public instruction (OSPI) specifically for dropout reengagement programs. The criteria shall be based on the community or technical college credits generated by the student if the program provider is a community or technical college or based on a minimum amount of planned programming or instruction and minimum attendance by the student rather than hours of seat time if the program provider is a community based organization. (See WAC 392-700-160.))) can be claimed on a monthly basis with the maximum being 1.0 FTE per month.

(13) **"Instructional staff"** means the following:

(a) For programs operated by or in partnership with a district, the instructional staff is a certificated instructional staff pursuant to WAC 392-121-205;

(b) For programs operated by or in partnership with a college, the instructional staff is one who is employed or appointed by the college whose required credentials are established by the college; and

(c) For programs operated by or in partnership with an agency, the instructional staff is one who is employed or appointed by the agency whose required credentials are established by the agency.

(14) **"Interlocal agreement"** means the document signed by the administrator of a ((school)) district and the administrator of a college when the program is operated by a college ((agrees to operate a reengagement program)) on behalf of the district and will receive compensation ((for doing so)) in accordance with WAC 392-700-165. The interlocal agreement will specifically outline all the required elements of a ((reengagement)) program (((as stated in this chapter))) that the college and the ((school)) district ((are agreeing)) agree to implement. ((A model interlocal contract containing standard language will be provided by OSPI and may be used by the school district when requesting OSPI approval of their program as a reengagement program.))

(15) **"Letter of intent"** means the document signed by the administrator of ((any school)) a district or ((technical)) college that specifically outlines ((all)) the required elements of a ((reengagement)) program (((as stated in this chapter))) that the ((school)) district or ((technical)) college ((is agreeing)) agree to implement. ((A model letter of intent containing standard language will be provided by OSPI and may be used by the school district or technical college when requesting OSPI approval of their program as a reengagement program.))

(16) **"Measure of academic progress"** means standard academic benchmarks that are measures of academic performance which are attained by reengagement students in addition to a credential. These measures will be tracked and reported by ((reengagement)) the program((s)) and ((school)) district((s)) for each student and for ((reengagement)) programs as a whole using definitions and procedures outlined by OSPI. Measures of academic progress will be reported when a student does one of the following:

(a) Passes one or more ((GED tests)) high school equivalency certificate measures (each measure may only be claimed once ((in a year)));

(b) Makes a significant gain in math and/or reading skills level as measured by a post-test using a commonly accepted standardized assessment (may be claimed multiple times in a year);

(c) Completes approved college readiness course work with documentation of competency attainment;

(d) Completes job search and job retention course work with documentation of competency attainment;

(e) Successfully completes a paid or unpaid work based learning experience of at least forty-five hours. This experience must meet ((~~all~~)) the requirements of WAC 392-410-315(2);

(f) Enrolls in postsecondary classes other than adult basic education (ABE((~~/GED/~~))), high school equivalency certificate, or English as a second language (ESL); or

(g) Transitions from ESL to ABE((~~/GED~~)) high school equivalency certificate classes;

(h) Transitions from ABE((~~/GED~~)) high school equivalency certificate classes to postsecondary developmental math and English classes (math or English classes ((~~at less than~~)) below the 101 level);

(i) Transitions from postsecondary developmental math or English classes to the next level of postsecondary developmental math or English or from postsecondary developmental math or English classes to college level math and English classes (classes at 101 or above); and

(j) Transitions from ABE((~~/GED~~)) high school equivalency certificate classes to college level classes at 101 or above (other than English or math).

(17) **"Minimum attendance standard"** means the minimum attendance that must be made by a student enrolled in a ((~~reengagement program operated by an agency or directly by a district in order for student FTE to be reported for that student on any monthly count day. (See WAC 392-700-165 (1)(a)(ii).)~~

~~"Nonstandard school year" means the months of the year, not in the standard school year; the period during which a summer instruction may be offered.~~)) program in order to be eligible to be claimed on any monthly count day.

(18) **"Noninstructional staff"** is any person employed in a position that is not an instructional staff as defined under subsection (13) of this section.

(19) **"OSPI"** means the office of superintendent of public instruction.

(20) **"Program"** means a statewide dropout reengagement program approved by OSPI, established through E2SHB 1418, and pursuant to RCW 28A.175.105.

(21) **"School year"** ((~~means~~)) is the twelve-month period that ((~~encompasses the standard nine month school year and the three month nonstandard school year.~~

~~"Standard school year" means the nine months from September through May or October through June during which instruction is provided and FTE is reported.~~

~~"Student full-time equivalent (FTE)" means the enrollment reported to OSPI for an enrolled student on a monthly basis with the maximum being 1.0 FTE per month.~~

~~"Total annual student full-time equivalent" means the sum of the annual student full-time equivalents (AFTEs) reported for a reengagement program.~~

~~"Written agreement" means either a contract or an interlocal agreement~~)) begins in September and ends in August during which instruction is provided and FTE is reported.

AMENDATORY SECTION (Amending WSR 11-17-045, filed 8/11/11, effective 9/11/11)

WAC 392-700-035 Student eligibility. (1) ((~~Youth~~)) Students are eligible ((~~for reengagement programming~~)) to enroll in a program when they meet the following criteria:

(a) Under twenty-one years of age, but at least sixteen years of age, as of September 1st;

(b) Have not yet met the high school graduation requirements of either the district, or the college under RCW 28B.50.535; and

(c) Are significantly behind in credit as outlined below:

(i) Students who, based on their expected graduation date, participated or could have participated in up to two full years of high school must have an earned to attempted credit ratio that is sixty-five percent or less((~~.~~)); or

(ii) Students who, based on their expected graduation date, participated or could have participated in more than two full years of high school must have an earned to attempted ratio that is seventy-five percent or less.

(2) If not credit deficient as outlined in subsection (1)(c) of this section, have been:

(a) Recommended for enrollment by case managers from the department of social and health services, the juvenile justice system, district approved school personnel, or staff from community agencies which provide educational advocacy services;

(b) Are not currently enrolled in any high school or other educational program receiving state basic education funding; and

(c) Released from their district of residence and accepted by the serving district, if the ((~~reengagement~~)) program is operated by a different district.

(3) Once determined eligible for ((~~reengagement programming~~)) enrolling in the program, a student will retain eligibility, regardless of breaks in enrollment, until the student does one of the following:

(a) Earns a high school diploma;

(b) Earns an associate degree;

(c) Becomes ineligible because of age which occurs when a student is twenty-one years of age as of September 1st.

(4) A student's eligibility does not ((~~necessarily~~)) guarantee enrollment or continued enrollment in specific ((~~reengagement~~)) programs if the program determines that the student does not meet the program's enrollment criteria or if, after enrollment, a student's academic performance or conduct does not meet established program guidelines.

NEW SECTION

WAC 392-700-042 Program operating agreements and OSPI approval. (1) Districts, agencies, and colleges are encouraged to work together to design programs and collaborations that will best serve students. Many models of operation are authorized as part of the statewide dropout reengagement system.

(a) A district may enter into one of the following models of operations:

(i) An interlocal agreement with a college;

(ii) A contract with an agency; or

(iii) Directly operate a program through a letter of intent.

In each of these models, the necessary agreement will address whether the program will only serve students who are residents of the district or whether the program will also serve students who are not residents of the district but who petition for release from the resident district, under RCW 28A.225.-220 through 28A.225.230, in order to attend the program.

(b) A district may work with other districts, with regional partner agencies, with colleges in or near the district to form a consortium. The purpose of the consortium will be to create and operate a program that will serve students enrolled in multiple districts and reduce the administrative burden on districts. If such a regional reengagement consortium is implemented, a consortium lead agency will be identified and assume the following responsibilities:

(i) Take the lead in organizing and managing the regional consortium;

(ii) Provide information and technical assistance to districts interested in participating in the consortium and providing the opportunity for students from their district to enroll;

(iii) Develop a consortium agreement that is signed by all member districts;

(iv) Develop interlocal agreements and contracts with agencies and colleges to operate the programs;

(v) Provide oversight and technical assistance to the program to ensure compliance with all requirements of this chapter and the delivery of quality programming;

(vi) Assist the program with the preparation of required reports, enrollment data, and course records needed by each district to enroll students, award credit, and report FTE and performance to OSPI;

(vii) Facilitate data entry of required student data into each district's statewide student information system related to enrollment; and

(viii) Work with the districts to facilitate the provision of special education and accommodations under Section 504 of the Rehabilitation Act of 1973.

(c) A technical college receiving direct funding and authorized to enroll students under WAC 392-121-187 may directly operate a program and serve students referred from multiple districts. The technical college will assume the responsibilities of operating the program as described in this chapter and will meet all responsibilities outlined in WAC 392-121-187.

(2) All programs must be approved by OSPI as follows:

(a) If the program is run by a district, agency or college, the program must be approved.

(b) If the program is run by a consortium, both the program and participating districts must be approved.

(3) Dependent on the model of operations, OSPI will specify the necessary documentation required for approval.

(4) OSPI will provide a model interlocal agreement, a model contract, a model letter of intent, and a model consortium agreement and will indicate which elements of these standard documents must be submitted to OSPI for review and approval.

(5) Upon initial approval, OSPI will specify the duration of the approval, assign a school code, and indicate the necessary criteria to obtain reapproval. The school code will be used to uniquely identify this program and all students enrolled in the program in the district's/college's student data system and in CEDARS.

(6) If a district does not operate a program directly or enter into an interlocal agreement or contract with an agency or college, the agency or college may petition a district other than the resident district to enroll the eligible students under RCW 28A.225.220 through 28A.225.230 and enter into an interlocal agreement or contract with the petitioning entity to provide a program for the eligible students.

(7) This chapter does not affect the authority of districts, under RCW 28A.150.305 and 28A.320.035, to contract for educational services other than reengagement programs

AMENDATORY SECTION (Amending WSR 11-17-045, filed 8/11/11, effective 9/11/11)

WAC 392-700-065 Instruction. (1) All program instruction ((~~for reengagement students enrolled in programs operated by an agency~~)) will meet the following criteria:

(a) Instruction will be designed to help students acquire high school credits, acquire at least high school level skills, and be academically prepared for success in college and/or work.

(b) Instruction will be provided in accordance with the skills level and learning needs of individual students and not the student's chronological age or associated grade level. Therefore:

(i) Instruction that is at the ninth grade level or higher shall generate credits that can be applied to a high school diploma; and

(ii) Instruction that is below the ninth grade level shall not generate high school credits but will be counted as part of the program's instructional programming for the purposes of calculating FTE and will be designed to prepare students for course work that is at the ninth grade level or higher.

(c) Instruction in which each student is enrolled will not be limited to only those courses or subject areas in which they are deficient in high school credits.

(d) The program will administer standardized tests within one month of enrollment or secure test results from no more than six months prior to enrollment in order to determine a student's initial math and reading level upon entering the program.

(e) The district, agency or college will provide all instruction, tuition, and required academic skills assessments at no cost to the students, but may collect mandatory fees as established by each program.

(i) Consumable supplies, textbooks, and other materials that are retained by the student do not constitute tuition or a fee.

(ii) Programs are encouraged to offer a waiver or scholarship process.

(2) Instruction for students enrolled in programs operated by a district or agency will meet the following criteria:

(a) Instruction must include:

(i) Academic skills instruction and ((~~GED~~)) high school equivalency certificate preparation course work with curriculum and instruction appropriate to each student's skills levels and academic goals; and

(ii) College readiness and work readiness preparation course work.

(b) Instruction may include:

(i) Competency based vocational training;

(ii) College preparation math or writing instruction;

(iii) Subject specific high school credit recovery instruction;

(iv) English as a second language instruction (ESL); and

(v) Other course work approved by the ((~~school~~)) district, including cooperative work experience.

(c) Instruction will be scheduled so that ((~~all~~)) enrolled students have the opportunity to attend and work with instructional staff during ((~~all~~)) the hours of the program's standard instructional day.

(d) The program will maintain an instructor to student ratio as follows:

(i) The scheduled teaching hours of an instructional staff will equal or exceed the hours of the program's standard instructional day plus one additional hour per every five teaching hours for planning, curriculum development, recordkeeping, and required coordination of services with case management staff.

(ii) The program will assign instructional staff as needed to maintain an instructional staff FTE to student ratio that does not exceed 1:25.

(iii) For programs that use noninstructional staff as part of the calculated instructional staff FTE to student ratio, the following conditions must be met:

(A) Noninstructional staff may not be a replacement for the instructional staff and must work under the guidance and direct supervision of the instructional staff; and

(B) The ratio of total instructional and noninstructional staff FTE to students may not exceed 1:50.

(((~~(2)~~))) (3) Instruction for ((~~reengagement~~)) students enrolled in programs operated by a college will meet the following criteria:

(a) Instruction will be provided through courses approved by the college, identifiable by course title, course number, quarter, number of credits, and, for vocational course, the classification of instructional((~~; and~~)) program (CIP) code number assigned by OSPI to the approved career and technical education (CTE) course.

(b) The following instruction will be offered ((~~provided~~)) to all students, as appropriate ((~~with their~~)) for their goals, skills levels, and ((~~goals, will have the opportunity to enroll in each~~)) completion of prerequisites:

(i) Basic skills remediation courses and ((~~GED~~)) high school equivalency certificate preparation courses;

(ii) Courses that will lead to a postsecondary degree or certificate;

(iii) Course work that will lead to a high school diploma; and

(iv) College and work readiness preparation course work.

(((~~(3) The instruction in which each student is enrolled will not be limited to only those courses or subject areas in which they are deficient in high school credits.~~

~~(4) All reengagement instruction will be designed to help students acquire high school credits, acquire at least high school level skills, and be academically prepared for success in college and/or work. All instruction will be provided in accordance with the skills level and learning needs of individual students and not the student's chronological age or associated grade level. Therefore:~~

~~(a) All instruction that is at the ninth grade level or higher shall generate credits that can be applied to a high school diploma; and~~

~~(b) All instruction that is below the ninth grade level shall not generate high school credits but will be counted as part of the program's instructional programming for the purposes of calculating student FTE (see also WAC 392-700-155) and will be designed to prepare students for course work that is at the ninth grade level or higher.~~

~~(5) The program will administer standardized tests within one month of enrollment or secure test results from no more than six months prior to enrollment in order to determine a student's initial math and reading level upon entering the program.~~

~~(6) The agency or college will provide all instruction, core instructional materials, and required academic skills assessments at no cost to the students.~~)) (c) The program will maintain an instructor to student ratio as follows:

(i) Instructor to student ratio for any course open to both program students and nonprogram students will be determined by the college; and

(ii) Instructor to student ratio for classes designed exclusively for program students will not exceed 1:35.

AMENDATORY SECTION (Amending WSR 11-17-045, filed 8/11/11, effective 9/11/11)

WAC 392-700-085 Case management and student support. (1) Case management staff will be employed or assigned to the ((~~reengagement~~)) program to provide accessible, consistent support to students, as well as, academic advising, career guidance information, employment assistance or referrals, and referrals to social and health services.

(2) The program will maintain a case management staff to student ratio not to exceed 1:75 (one case manager FTE to seventy-five enrolled students) on a full-time continuous basis throughout the ((~~program~~)) school year.

(3) Only the percent of each staff member's time that is allocated to fulfilling case management responsibilities for reengagement students will be included in the calculation of a program's case management staff FTE to student ratio.

(4) Even though the provision of case management services ((~~will~~)) may require case management staff to work in the community to meet client needs, case management staff will be primarily based at the ((~~reengagement~~)) program's instructional site(s).

(5) The district, agency, or college will ensure that case management services and instruction are integrated and coordinated and that procedures are in places that facilitate timely relevant communication about student progress.

(6) Case management staff will be ((~~employed or~~)) assigned to provide services to ((~~reengagement~~)) students on a continuous basis throughout the ((~~program~~)) school year.

(7) All case management staff will ((~~be employed or assigned by the agency or college and will~~)) have at least a bachelor's degree in social work, counseling, education, or a

related field **or** at least two years' experience providing case management, counseling, or related direct services to at-risk individuals or sixteen to twenty-one year old youth.

NEW SECTION

WAC 392-700-137 Award of credit. (1) For programs operated by districts and agencies, high school credit will be awarded for all course work in which students are enrolled, including high school equivalency certificate preparation, in accordance with the following:

(a) Determination of credit will take place on a quarterly basis with quarters defined as follows:

(i) September through November;

(ii) December through February;

(iii) March through May; and

(iv) June through August.

(b) Credit will be awarded at the end of each quarter, in accordance with the following guidelines, if the student has been enrolled for at least one month of the quarter:

(i) A maximum of 0.5 high school elective credits will be awarded when a student passes one or more standardized high school equivalency certificate pretests during the quarter and the instructional staff has assessed student learning and determined that a course of study has been successfully completed.

(ii) A 0.5 high school elective credit will be awarded when a student makes a statistically significant standardized assessment post-test gain in a specific subject area during the quarter and the following conditions are met:

(A) The student's standardized skills assessment score at the beginning of the quarter demonstrated high school level skills; and

(B) The instructional staff has assessed student learning and determined that a course of study has been successfully completed. A maximum of 1.0 credit may be awarded for such subject gains in a quarter.

(iii) High school elective credit ranging from at least 0.1 credits to no more than 0.25 credits will be awarded for completion of a work readiness or college readiness curriculum in which the student has demonstrated mastery of specific competencies. The district and the agency will determine the amount of credit to be awarded for each course of study based on the competencies to be attained.

(iv) For students taking part in district approved subject-specific credit recovery course work, the amount and type of credit to be awarded will be defined by the district.

(v) The district may elect to award credit for other course work provided by the agency with amount of credit to be awarded determined in advance, based on the agency's instructional staff's recommendation and on a district review of the curriculum and intended learning outcomes. Credit will only be awarded when:

(A) The student's standardized skills assessment score at the start of the quarter demonstrates high school level skills; and

(B) The instructional staff has assessed student learning and determined that the course of study has been successfully completed.

(2) For programs operated by colleges, high school credit will be awarded for course work in which students are enrolled, in accordance with the following:

(a) The district and the college will determine whether the high school diploma will be awarded by the district or by the college as part of the college's high school completion program.

(b) If the college is awarding the diploma:

(i) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of college course work at or above the one hundred level. The college will determine the type of credit;

(ii) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of college course work that is below the one hundred level but has been determined by the college to be at the ninth grade level or higher. The college will determine the type of credit. College based high school equivalency certificate and adult basic education (ABE) classes will not be included in this category;

(iii) 0.5 elective credits will be awarded for successful completion of every five quarter or three semester hours of high school equivalency certificate course work; and

(iv) ABE courses or other college courses that have been determined to be below the ninth grade level that does not generate high school credit will be counted as part of the program's instructional programming for the purposes of calculating FTE.

(c) If the district is awarding the diploma:

(i) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of college course work at or above the one hundred level. The district will determine the type of credit;

(ii) 0.5 or 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of college course work that is below the one hundred level but has been determined by the district to be at the ninth grade level or higher. The district will determine the type and amount of credit for each class. College based high school equivalency certificate and ABE classes will not be included in this category;

(iii) 0.5 elective credits will be awarded for successful completion of every five quarter or three semester hours of high school equivalency certificate course work; and

(iv) ABE courses or other college courses that have been determined to be below the ninth grade level will not generate high school credit but the college credits associated with these courses will be included in the total credit count used to calculate and report student FTE.

(3) The district is responsible for reporting all high school credits earned by students in accordance with OSPI regulations. College transcripts and other student records requested by the district will be provided by the college or agency as needed to facilitate this process.

(4) The district will ensure that the process for awarding high school credits under this contract is implemented as part of the district's policy regarding award of credits per WAC 180-51-050 (5) and (6).

NEW SECTION

WAC 392-700-147 Provision of special education and Section 504 of the Rehabilitation Act of 1973 accommodations. (1) The resident district is responsible for the provision of special education services to any enrolled reengagement students who qualify for special education in accordance with all state and federal law and pursuant to chapter 392-172A WAC.

(2) Section 504 of the Rehabilitation Act of 1973 accommodations will be provided to all eligible students served by the agency or college in accordance with all applicable state and federal law.

NEW SECTION

WAC 392-700-152 Statewide student assessment. (1) All programs will ensure that students have the opportunity to participate in the statewide assessment of student learning to fulfill the minimum requirements for high school graduation.

(2) The district will include program students when calculating district-wide statistics in relation to the statewide assessments.

(3) The program staff is not required to be direct test administrators but may act in this capacity with the approval of the reporting district which will be responsible for the appropriate training of agency or college staff. The reporting district will submit the proposed test site information to OSPI if a program is operating in adult jail, adult institution, hospital care, home care, library, group home, or church.

AMENDATORY SECTION (Amending WSR 11-17-045, filed 8/11/11, effective 9/11/11)

WAC 392-700-155 Annual reporting calendar. (1) For ((~~reengagement~~)) programs operated by district and agencies, the following requirements will be met in relation to the school calendar:

(a) The school year ((~~calendar shall be as follows:~~

~~(i) The standard school year will have nine instructional months and will~~)) begins in September and ends in ((~~May; and~~

~~(ii) The agency may, but is not required to, offer instruction during one or more months of the nonstandard school year which will begin in June and end in~~)) August((~~;~~)).

(b) The ((~~agency~~)) program will provide the reporting district a calendar of ((~~instruction for~~)) the ((~~standard~~)) school year prior to the ((~~first day of instruction in September.~~

~~(c) If the agency is going to provide summer reengagement instruction during one or more months of the nonstandard school year, the agency will provide the district with a calendar for the nonstandard school year prior to April 1st.~~

~~(d) Both the standard year and nonstandard year~~)) beginning of the program's start date for that school year.

(c) The school year calendar((~~s~~)) must meet the following criteria:

(i) ((~~Each of the instructional months will have at least ten instructional days;~~

~~(ii)~~)) The specific planned days of instruction will be identified; and

(((~~(iii)~~))) (ii) There must be a minimum of ten instructional months.

(d) The number of hours of instruction as defined in WAC ((~~392-700-065 (1), (3), and (4) that will be provided in a standard instructional day will be defined. For the purposes of calculation:~~

~~(A)~~)) 392-700-065 must meet the following criteria:

(i) The calculation for standard instructional day may not exceed six hours per day even if instruction is provided for more than six hours per day; and

(((~~(B)~~))) (ii) The standard instructional day may not be less than two hours per day((~~; and~~

~~(iv) The calculated number of hours of instruction that will be provided in a standard instructional day during the standard school year may be different than the calculated number of hours of instruction that will be provided in a standard instructional day in the nonstandard school year~~)).

(e) The ((~~agency's~~)) total planned hours of instruction ((~~will be calculated and reported as part of each calendar.~~

~~(i) The total planned hours of instruction for the standard school year will be calculated by multiplying the total number of instructional days scheduled during the standard school year by the hours of instruction that will be provided on a standard instructional day during the standard school year; and~~

~~(ii) The total planned hours of instruction for the nonstandard school year will be calculated by multiplying the total number of instructional days scheduled during the nonstandard school year by the hours of instruction that will be provided on a standard instructional day during the nonstandard school year.~~

~~(f) If the agency is going to offer instruction for the nonstandard school year, the average hours of instruction per instructional month must be calculated and reported as part of the nonstandard year calendar. The average hours of instruction per month will be calculated by dividing the total planned hours of instruction for the nonstandard school year by the number of instructional months that will be provided during the nonstandard school year~~)) for the school year is the sum of the instructional hours for all instructional months of the school year.

(2) For ((~~reengagement~~)) programs operated by colleges((~~, the following requirements will be met in relation to the school calendar~~)):

(a) The ((~~standard~~)) school year ((~~will be nine months in length.~~

~~(b) Annually, the college and the school district will determine whether the standard school year runs from September through May or from October through June.~~

~~(c)~~)) calendar shall meet the following criteria:

(i) The specific planned days of instruction will be identified; and

(ii) There must be a minimum of ten instructional months.

(b) The count day for each ((~~of the nine months of the standard school year will be~~)) month is the first college instructional day ((~~of each~~)) of the month((~~s.~~

~~(d) Regardless of the program's annual reporting calendar, instruction will be offered in accordance with the college's academic calendar.~~

~~(e) Instruction provided during a college's summer quarter or summer session will not be included in the standard school year. The three months that include the summer quarter of summer sessions will be considered the nonstandard school year.~~

~~(f) The count day for each of the three months of the nonstandard school year will be the first college instructional day of each of the months.~~

~~(g) Colleges will not be required to offer instruction to reengagement students during the nonstandard school year~~)).

AMENDATORY SECTION (Amending WSR 11-17-045, filed 8/11/11, effective 9/11/11)

WAC 392-700-160 Reporting of student ((~~FTE~~)) enrollment. (1) For ((~~reengagement~~)) all programs ((~~operated by agencies, student FTE will be reported as follows:~~

~~(a) Student FTE for the standard school year for reengagement~~)), the following will apply when reporting student enrollment:

(a) Met all eligibility criteria pursuant to WAC 392-700-035;

(b) Been accepted for enrollment by the reporting district or the direct funded technical college;

(c) Enrolled in an approved program pursuant to WAC 392-700-042;

(d) Met the minimum attendance standard by attending at least one instructional day on count day or during the month prior to count day;

(e) Has not withdrawn or been dropped prior to the monthly count day;

(f) If concurrently enrolled in any other program for which basic education allocation funding is received, i.e., common high school, running start, alternative learning experience, or college in the high school, does not exceed the FTE limitation pursuant to WAC 392-121-136;

(g) Is not enrolled in course work that has been reported by a college for postsecondary funding; and

(h) A student's enrollment in the program is limited to the following:

(i) May not exceed 1.0 FTE in any month (including nonvocational and vocational FTE).

(ii) May not exceed 1.00 AAFTE in any school year as defined in WAC 392-700-015(2).

(2) For programs operated by districts and agencies, the student enrollment is dependent upon attaining satisfactory progress during any three month period that a student is reported as 1.0 FTE.

(a) Satisfactory progress is defined as the documented attainment of at least one credential identified in WAC 392-700-015(9) and/or of at least one measure of academic progress identified in WAC 392-700-015(16).

(b) A student who after any three month period of being counted for a 1.0 FTE has not attained a credential or a measure of academic progress cannot be counted until a credential or measure of academic progress is earned.

(i) During this reporting exclusion period, the program may elect to permit the student to continue to attend;

(ii) When the student achieves a credential or a measure of academic progress, the student enrollment may resume to be reported for funding. A new three month period for attaining a credential or a measure of academic progress begins; and

(iii) Rules governing the calculation of the three month period are:

(A) The three month period may occur in two different school years, if the student is enrolled in consecutive school years;

(B) The three month period is not limited to consecutive months, if there is a break in the student's enrollment; and

(C) For students claimed less than 1.0 FTE, the three month period is adjusted proportionately to provide additional time to attain a credential or a measure of academic progress.

(3) For programs operated by districts or agencies, student enrollment will be reported ((~~in accordance with the following~~)) as follows:

(((~~i~~))) (a) If the program's total planned hours of instruction pursuant to WAC 392-700-155 (1)(d) for the ((~~standard~~)) school year equals or exceeds nine hundred hours (((~~also see WAC 392-700-155 (1)(e)~~))):

(((~~A~~))) (i) The program will be considered a full-time program; and

(((~~B) Each~~)) (ii) An enrolled student ((~~will be~~)) is a full-time student and is reported ((~~for a standard full-time student FTE of~~)) as 1.0 FTE on each monthly count day ((~~of the regular school year as long as they meet the minimum attendance standard and demonstrate satisfactory progress as defined in WAC 392-700-165(1)~~)).

(((~~ii~~))) (b) If the program's total planned hours of instruction for the ((~~regular~~)) school year totals less than nine hundred hours((~~, then~~)):

(((~~A~~))) (i) The program will be considered a part-time program ((~~and a standard~~));

(ii) An enrolled student is a part-time student and is reported as a part-time FTE ((~~figure will be used;~~

~~(B)~~)) on each monthly count day; and

(iii) The ((~~standard~~)) part-time FTE ((~~figure will be~~)) is calculated by dividing the program's total planned hours of instruction by nine hundred((~~; and~~

~~(C) The standard part time FTE figure will be reported for each enrolled student on each monthly count day of the standard school year as long as they meet the minimum attendance standard and demonstrate satisfactory progress as defined in WAC 392-700-165(1).~~

~~(b) Student FTE for the nonstandard school year for reengagement programs operated by agencies will be reported in accordance with the following:~~

~~(i) No student may be reported as an FTE on count days during the nonstandard year months of instruction after the point they have been reported by any district for 1.0 annual FTE for the school year beginning in September;~~

~~(ii) If the program's average hours of instruction per instructional month for the nonstandard school year equals or exceeds one hundred hours (also see WAC 392-700-155 (1)(f)):~~

(A) The program will be considered a full-time program; and

(B) Each enrolled student will be reported as a 1.0 FTE for each instructional month as long as they meet the minimum attendance standard and demonstrate satisfactory progress as defined in WAC 392-700-165(1); and

(iii) If the program's average hours of instruction per instructional month for the nonstandard school year is less than an average of one hundred hours per month of instruction:

(A) The program will be considered a part-time program and a standard part-time FTE figure will be used;

(B) The standard part-time FTE figure will be calculated by dividing the average hours of instruction per instructional month by one hundred; and

(C) The standard part-time FTE figure will be reported for each enrolled student on each monthly count day of the nonstandard school year as long as they meet the minimum attendance standard and demonstrate satisfactory progress as defined in WAC 392-700-165(1))).

(((2))) (4) For reengagement programs operated by colleges, student ((FTE)) enrollment will be reported ((in accordance with the following)) as follows:

(a) ((The number of credits of college course work in which a student is enrolled on the monthly count day will determine the student FTE reported each month.

(b) A student enrolled in)) For students enrolled in college level classes, the FTE is determined by the student's enrolled credits on each monthly count day.

(i) Fifteen ((quarterly)) college credits ((on the count day of any month will be reported as)) equal 1.0 FTE ((for that month.));

(((c) If)) (ii) A student ((is)) enrolled in more than fifteen ((quarterly)) college credits ((on the count day of any month, only fifteen of these can)) is limited to be reported ((as reengagement enrollment credits and the student will be reported)) as 1.0 FTE for that month((.

(d))); and

(iii) If a student is enrolled ((in)) for less than fifteen ((quarterly)) college credits, the FTE ((reported for that month will be)) is calculated by dividing the ((number of)) enrolled college credits ((of enrollment)) by fifteen.

(((e) If a student withdraws or is dropped prior to a monthly count day, the student will not be counted as enrolled for that month and no student FTE will be reported.

(3) For all reengagement programs, agencies, colleges, and school districts will adhere to the following when reporting student FTEs:

(a) No student may be counted for more than 1.0 FTE in any month (including nonvocational and vocational FTE).

(b) If nonstandard school year instruction is provided, FTE may not be reported for any student after a total of 1.0 annual FTE has been reported for that student by any school district during the standard school year.

(c) The agency or college may not report student FTEs to the school district and the school district may not report student FTEs to OSPI for reengagement students who are concurrently enrolled in any other program for which basic education allocation funding is received, i.e., common high school, running start, alternative learning education, college in the high school, education clinic, or on-line learning.

(d) The agency or college may not report student FTEs to the school district and the school district may not report student FTEs to OSPI for reengagement students who are enrolled in course work that has been reported by a college for postsecondary student FTE.)) (b) For students enrolled in classes below college level pursuant to WAC 392-700-065(3), the student must meet the requirement of attaining satisfactory progress during any three month period pursuant to WAC 392-700-160(2) and the program's FTE for each student is based on the program's total planned hours of instruction pursuant to WAC 392-700-160(3).

AMENDATORY SECTION (Amending WSR 11-17-045, filed 8/11/11, effective 9/11/11)

WAC 392-700-165 Funding and reimbursement. (((1) For reengagement programs operated by agency or college, the school district and the agency will receive state basic education apportionment funding, as authorized in RCW 28A.175.100 and WAC 392-700-001 relating to the creation of a statewide dropout reengagement system, in accordance with the procedures set forth below:

(a) Each student will be reported as a full- or part-time student FTE on each monthly count day in accordance with the procedures outlined in WAC 392-700-160, only if all of the following conditions are met:

(i) Enrollment on or before count day;

(ii) Have met the minimum attendance standard by attending at least one instructional day on count day or during the month prior to count day; and

(iii) Has not withdrawn prior to the monthly count day.

(b) For students enrolled in reengagement programs operated by an agency reporting of FTE for students will be dependent upon satisfactory progress as outlined below:

(i) Satisfactory progress will be defined as the documented attainment of at least one credential and/or one measure of academic progress during any period that a student is reported for a total of 3.0 student FTE (also see WAC 392-700-175(4));

(ii) If a student has not attained a credential or at least one of the approved measures of academic progress during the period that 3.0 student FTEs have been reported, no additional student FTE will be reported until the student does make one of the specified gains or earns a credential;

(iii) During the reporting exclusion period, the student will be allowed to continue to attend the reengagement program, if the program has the resources and capacity to support that student;

(iv) When and if the student achieves one of the specified gains or earns one of the credentials, FTE may again be reported for that student and the student will again be required to attain a measure of academic progress or earn a credential during the next period for which 3.0 student FTE is reported; and

(v) Rules governing the calculation of the 3.0 student FTEs as it relates to attain a measure of academic progress:

(A) The period during which the 3.0 student FTE is calculated and academic progress or a credential must be

~~attained, may occur in two different school years, if the student is enrolled in successive school years;~~

~~(B) 3.0 student FTEs may be reported over the course of three successive months or over the course of multiple months;~~

~~(C) For students enrolled in full-time reengagement programs operated by an agency, 1.0 FTE will be reported each month for students who meet the conditions of WAC 392-700-160 (1)(b)(ii). Therefore, these students will be required to attain a measure of academic progress or earn a credential within three months;~~

~~(D) For students enrolled in part-time reengagement program operated by an agency, it will take more than three months to report 3.0 student FTEs because standard student FTE for all students who meet the conditions of WAC 392-700-160 (1)(b)(iii) is less than 1.0; and~~

~~(E) The period that is used to calculate the 3.0 student FTEs is not limited to successive months. (For example, if a student was claimed as 1.0 FTE for January, February and April, but not in March, the student will not have to make a gain or earn a credential until the end of April.)~~

~~(c) In relation to school closures, during the standard school year:~~

~~(i) If planned days of instruction, as scheduled on the standard year calendar, are not provided, the agency may make up the scheduled days, as long as the replacement days occur during the nine months that comprise the standard school year;~~

~~(ii) At the end of the standard school year, prior to the final invoice, the agency will report to the district the actual total hours of instruction provided. The agency may not include more than six hours per instructional day in this calculation per WAC 392-700-155 (1)(d)(iii);~~

~~(iii) If the program was a full-time program and total hours of instruction provided is less than nine hundred hours of instruction, the amount of basic education apportionment funding received by the school district and agency will be adjusted retroactively on a proportional status and will be reflected on the final invoice;~~

~~(iv) If the program was a part-time program and total hours of instruction provided is less than the total planned hours of instruction, the amount of basic education apportionment funding received by the school district and agency will be adjusted retroactively on a proportional status and will be reflected on the final invoice; and~~

~~(v) These calculations take into account any reductions to the total planned hours of instruction that may have been made during the standard or nonstandard school year in the event of program closures consistent with the provisions of chapter 392-129 WAC.~~

~~(2) For reengagement programs operated by colleges, the school district and college will receive state basic education apportionment funding in accordance with the following:~~

~~(a) Reimbursement will be based on the student FTE reported each month;~~

~~(b) Student FTE will be reported as outlined in WAC 392-700-160(2); and~~

~~(c) If a student withdraws or is dropped from classes prior to a monthly count day, the student will not be counted as enrolled for that month and no student FTE will be reported for that month.~~

~~(3) For all reengagement programs, the following rules apply:~~

~~(a) School district will work with the agency or college to ensure that student FTE and related data is reported as required on the appropriate P223x form;~~

~~(b) The school district, agency, and college will ensure that no student FTE is reported nor reimbursement requested from OSPI for any student after the point they have been reported by any district for 1.0 annual FTE for the school year beginning in September;~~

~~(c) The agency or college may not report student FTEs for reengagement students who are concurrently enrolled in any other program for which basic education allocation funding is received, i.e., common high school, running start, alternative learning education, college in the high school, education clinic, or on-line learning; and~~

~~(d) The agency or college may not report student FTEs to the school district for reengagement students enrolled in course work that has been reported by a college for postsecondary student FTE.~~

~~(4) For all reengagement programs the monthly reimbursement rate per student FTE for reengagement programs will be determined as follows:~~

~~(a) The annual standard nonvocational and vocational reimbursement rates for all reengagement program FTEs will equal the statewide average annual nonvocational and vocational FTE rates as determined by OSPI; and~~

~~(b) The amount of reimbursement received per month will equal the annual standard nonvocational and vocational reimbursement rate divided by nine.~~

~~(5)~~)) (1) OSPI shall apportion funding for an approved program to district or direct funded technical colleges based upon the reported nonvocational and vocational FTE enrollment and the standard reimbursement rates. The standard reimbursement rates are the statewide average annual nonvocational and vocational rates as determined by OSPI pursuant to WAC 392-169-095.

(a) The basic education allocation funded to districts will be as follows:

(i) Monthly payments for the months September through December is based on estimated student enrollment projected by the district.

(ii) Beginning in January, monthly payments shall be adjusted to reflect actual student enrollment.

(b) Direct funded technical colleges will be paid quarterly pursuant to WAC 392-121-187 (7)(c).

(2) Distribution of state funding for programs is as follows:

(a) For programs directly operated by a district, the district will retain one hundred percent of the basic education allocation.

(b) For programs directly operated by a direct funded technical college pursuant to WAC 392-121-187, the technical college will retain one hundred percent of the basic education allocation.

(c) For ((~~reengagement~~)) programs operated by a college or agency under contract or interlocal agreement with a ((~~school~~)) district:

(((~~(a)~~))) (i) The ((~~school~~)) district ((~~will~~)) may retain up to seven percent of the basic education ((~~FTE~~)) allocation ((~~received from OSPI for reported student FTEs~~)); and

(((~~(b)~~))) (ii) The agency or college will receive ((~~ninety-three percent of~~)) the remaining basic education ((~~FTE~~)) allocation ((~~received by the school district from OSPI for reported student FTEs.~~

~~(6) For reengagement programs directly operated by a school district and serving only students enrolled in that district: The district will assume all the responsibilities outlined in this chapter for both the district and the program and will retain one hundred percent of the basic education FTE allocation received from OSPI for reported student FTEs.~~

~~(7) For reengagement programs directly operated by a technical college receiving direct funding and authorized to directly enroll students and act as a district under WAC 392-121-187: The technical college will assume all the responsibilities outlined in this chapter for both the district and the program and will retain one hundred percent of the basic education FTE allocation received from OSPI for reported student FTEs~~)).

(((~~(8)~~))) (d) For ((~~reengagement~~)) programs operated as part of a consortium with a consortium lead agency (((~~see WAC 392-700-225 (4)(e)~~))):

(((~~(a)~~))) (i) The ((~~school~~)) district ((~~will~~)) may retain up to five percent of the basic education ((~~FTE~~)) allocation ((~~received from OSPI for reported student FTEs~~));

(((~~(b)~~))) (ii) The consortium lead ((~~will receive~~)) may retain up to seven percent of the basic education ((~~FTE~~)) allocation ((~~received from OSPI for reported student FTEs~~)); and

(((~~(c)~~))) (iii) The operating agency or college will receive ((~~eighty-eight percent of~~)) the remaining basic education ((~~FTE~~)) allocation ((~~received by the district from OSPI for reported student FTEs~~)).

(3) In the event that the program closes prior to the end of the school year, the following will occur:

(a) If the planned days of instruction, as provided on the school year calendar are not provided, the agency may make up the scheduled days, as long as the replacement days occur during the school year;

(b) At the end of the school year, prior to the final monthly count day, the agency will report to the district the actual total hours of instruction provided;

(c) If the program was a full-time program and total hours of instruction provided is less than nine hundred hours of instruction, the amount of basic education funding received by the district and agency will be adjusted retroactively on a proportional status and will be reflected on the final enrollment count; and

(d) If the program was a part-time program and total hours of instruction provided is less than the total planned hours of instruction, the amount of basic education funding received by the district and agency will be adjusted retroactively on a proportional status and will be reflected on the final enrollment count.

(4) Programs and districts may provide transportation for students but additional funds are not generated or provided.

(5) Reengagement students enrolled in a state-approved K-12 transitional bilingual instructional program pursuant to chapter 392-160 WAC can be claimed by the district for bilingual enhanced funding.

AMENDATORY SECTION (Amending WSR 11-17-045, filed 8/11/11, effective 9/11/11)

WAC 392-700-175 Required ((~~reports and record-keeping~~)) documentation and reporting. (((~~(1) Agencies will submit a report of the actual and planned total hours of instruction for the standard school year with the last P223 report of the standard school year and colleges will submit a report of the actual and planned total days of instruction for the regular school year with the last P223 of the standard school year.~~

~~(2) Agencies will submit a report of the actual and planned total hours of instruction for the nonstandard school year with the last P223 report of the nonstandard school year and colleges will submit a report of the actual and planned total days of instruction for the nonstandard school year with the last P223 of the nonstandard school year.~~

~~(3) On a monthly basis, the agency or college will report the type of credentials earned by each enrolled student and by monthly and year-to-date total for the following:~~

~~(a) GED;~~

~~(b) High school diploma;~~

~~(c) College certificate received after completion of a program requiring at least forty hours of instruction;~~

~~(d) College degree; and~~

~~(e) Industry recognized certificate of completion of training or licensing received after completion of a program requiring at least forty hours of instruction.~~

~~(4) Each month the following measures of academic progress for each student will be reported on a monthly and year-to-date basis:~~

~~(a) Passes one or more GED tests (may only be claimed once in a year);~~

~~(b) Makes a significant gain in math and/or reading skills level as measured by a post-test using a commonly accepted standardized assessment (may be claimed multiple times in a year);~~

~~(c) Completes approved college readiness course work with documentation of competency attainment;~~

~~(d) Completes job search and job retention course work with documentation of competency attainment;~~

~~(e) Successfully completes a paid or unpaid work based learning experience of at least forty-five hours. This experience must meet all the requirements of WAC 392-410-315(2);~~

~~(f) Enrolls in postsecondary classes other than ABE/GED/ESL or continuing education courses;~~

~~(g) Transitions from ESL to ABE/GED classes;~~

~~(h) Transitions from ABE/GED classes to postsecondary developmental math and English classes (math or English classes at less than the 101 level);~~

~~(i) Transitions from postsecondary developmental math or English classes to the next level of postsecondary developmental math or English or from postsecondary developmental math or English classes to college level math and English classes (classes above at 101 or above); and~~

~~(j) Transitions from ABE/GED classes to college level classes at 101 or above (other than English or math).~~

~~(5) The agency or college will prepare and submit an annual performance report with, at a minimum, statistics related to the following standard reengagement system performance goals.~~

~~(a) Total enrolled students;~~

~~(b) Total annual FTE: The sum of all the enrolled students' annual FTE;~~

~~(c) Average annual FTE: The total annual student FTEs by the total enrolled students;~~

~~(d) Total measures of academic progress made and measures of academic progress made per annual student FTE: Total measures of academic progress divided by the total annual student FTE;~~

~~(e) Total high school credits earned and high school credits per annual student FTE;~~

~~(f) Total credentials earned and credentials earned per annual student FTE: Total high school credits divided by the total annual student FTE; and~~

~~(g) Total college credits earned and college credits earned per annual student FTE: Total college credits divided by the total annual student FTE.~~

~~(6) The program's annual performance report for the standard school year will be provided by the agency or college to the school district by no later than July 1st.~~

~~(7) The program's annual performance report, which will include outcomes from both the standard school year and the nonstandard school year and total annual school year will be provided by the agency or college to the school district by no later than September 1st.~~

~~(8) The school district will provide the program's annual performance report to the OSPI administrator responsible for implementation of the reengagement system by no later than September 30th.~~)) (1) Student documentation:

(a) The program shall maintain the following documentation to support the monthly enrollment claimed and make available upon request by the reporting district or direct funded technical college:

(i) Each student's eligibility pursuant to WAC 392-700-035;

(ii) Evidence of each student's enrollment requirements under WAC 392-700-160 to include:

(A) Enrollment in district or direct funded technical college;

(B) Minimum attendance standard; and

(C) Earned credentials or attained measure of progress.

(iii) Case management support pursuant to WAC 392-700-085.

(b) The district, agency, or college operating the program shall comply with all state and federal laws related to the privacy, sharing, and retention of student records.

(c) Access to all student records will be provided in accordance with the Family Educational Rights and Privacy Act (FERPA).

(2) Student reporting:

(a) The district, agency, or college to which the school code is assigned will ensure that there is accurate and timely data entry of all program student information into its student data system.

(b) The district, agency, or college to which the school code is assigned will transmit student data to CEDARS in accordance with OSPI standards and procedures for reengagement programs.

(3) Annual reporting:

(a) The program will prepare and submit an annual performance report to the district, agency, or college to which the school code is assigned no later than September 1st.

(b) The district, agency, or college to which the school code is assigned will review and submit the annual performance report to OSPI no later than September 30th.

(c) The annual report will include the following:

(i) Total number of students enrolled, dismissed, and withdrawn.

(ii) Total AAFTE reported for the school year.

(iii) Total number of instructional staff FTE.

(A) For programs operated by a district or agency, report total number of instructional staff assigned to the program.

(B) For programs operated by a college, report the number of instructional staff teaching students for the program.

(iv) Types and total measures of academic progress completed per AAFTE.

(v) Types and total credentials earned per AAFTE.

(vi) Total high school credits earned and high school credits per AAFTE.

(vii) Total college credits earned and college credits earned per AAFTE.

AMENDATORY SECTION (Amending WSR 11-17-045, filed 8/11/11, effective 9/11/11)

WAC 392-700-195 Longitudinal performance goals. (1) Longitudinal performance data for the ((~~reengagement~~)) program and the statewide reengagement system as a whole will be reported through the Washington's P-20 (preschool to postsecondary and workforce) longitudinal data system maintained by the ERDC.

(2) The ((~~school~~)) district will work with the agency or college to collect and report student data requested by the ERDC in order to accomplish the longitudinal follow-up of reengagement students. Specifically, the following unique identifier data points will be collected, to the extent possible, by the program, reported by the agency, and verified by the ((~~school~~)) district, for each enrolled reengagement student:

(a) Full legal name;

(b) Birth date;

(c) State student identifier (SSID);

(d) Social Security number; and

(e) College student identification number (SID), if applicable.

(3) While reengagement students will be encouraged to provide the data needed for longitudinal follow-up, the program will ensure that a student's unwillingness or inability to provide the requested data will not be a barrier to enrollment.

(4) Appropriate ((~~school~~)) district and/or agency, college, or consortium lead staff will participate in ERDC or OSPI training related longitudinal follow-up and a specific ((~~school~~)) district staff or ((~~school~~)) district designated program staff will be responsible for ensuring that accurate and complete student identifier data points are entered into the

((~~school~~)) district's student information system in accordance with this training.

(5) At the end of each ((~~program~~)) school year, the ERDC will identify the cohort of students for each ((~~reengagement~~)) program for whom longitudinal tracking will be done. ((~~A~~)) Standard criteria to determine when students will be included in a longitudinal study cohort will be developed by the ERDC, with input from OSPI, district and program representatives and will apply to all ((~~reengagement~~)) programs.

(6) The ERDC will collect longitudinal data for each specific program cohort on an annual basis for five years. The ERDC will work with the OSPI administrator responsible for ((~~reengagement~~)) programs to prepare annual program specific reports for each cohort and an annual system-wide report for the entire reengagement system including data for the cohorts of all programs.

(7) The ERDC and OSPI will work with the ((~~school~~)) district so that the ((~~school~~)) district and the agency or college will have the opportunity to review data about the program prior to the release of the annual reports in December of each year. The ERDC and OSPI will develop procedures by which the ((~~school~~)) district or agency can provide supplemental information and backup documentation for review and inclusion as it relates to postsecondary or workforce engagement of specific students in the cohort.

(8) In relation to postsecondary engagement, the ERDC will collect the following longitudinal data for students included in each program's follow-up cohort:

(a) Total number of ((~~annual FTEs~~)) AAFTE originally reported by the program during targeted school year for which follow-up data is being collected;

(b) Quarters of enrollment in postsecondary programming or other advanced training during the follow-up year and since the targeted school year ended;

(c) Enrolled credits per quarter during the follow-up year and total enrolled credits since the targeted school year ended;

(d) Earned credits per quarter during the follow-up year and total earned credits since the targeted school year ended; and

(e) Credentials earned during the follow-up year and total credentials earned since the targeted school year.

(9) In relation to labor market engagement, the ERDC will collect the following longitudinal data for students included in each program's follow-up cohort:

(a) Total number of ((~~annual FTEs~~)) AAFTE originally reported by the program during targeted school year for which follow-up data is being collected;

(b) Number of quarters with employment during the follow-up year and since the targeted school year ended;

(c) Average hours worked per week for any employment reported during the follow-up year and since the targeted school year ended;

(d) Average pay per hour for any employment reported during the follow-up year and since the targeted school year ended; and

(e) Total earnings during the follow-up year and since the targeted school year ended.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-700-025	Interlocal agreements.
WAC 392-700-045	Enrollment.
WAC 392-700-055	Student documentation.
WAC 392-700-075	Instructional staff to student ratio.
WAC 392-700-095	District administrative responsibilities.
WAC 392-700-105	Reporting of student data.
WAC 392-700-120	Statewide student assessment.
WAC 392-700-135	Provision of special education and Section 504 of the Rehabilitation Act of 1973 accommodations.
WAC 392-700-145	Award of credit.
WAC 392-700-200	Other agreements.
WAC 392-700-225	Operating agreements and OSPI approval.

WSR 13-08-051
PROPOSED RULES
STATE BOARD FOR COMMUNITY AND TECHNICAL COLLEGES

[Filed March 29, 2013, 8:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-03-029.

Title of Rule and Other Identifying Information: Chapter 131-16 WAC governing the Washington state board for community and technical colleges retirement plan.

Hearing Location(s): Green River Community College, 12401 S.E. 320th Street, Auburn, WA 98092, on May 9, 2013, at 8:00 a.m.

Date of Intended Adoption: May 9, 2013.

Submit Written Comments to: John Boesenberg, 1300 Quince Street S.E., Olympia, WA 98504, e-mail jboesenberg @sbctc.edu, fax (360) 704-4415, by April 25, 2013.

Assistance for Persons with Disabilities: Contact Beth Gordon by April 25, 2013, TTY (360) 704-4309 or fax (360) 704-4415.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We are repealing the rules governing the higher education retirement plan the state board sponsors. The plan document, adopted by the state board and required by the IRS, includes the rules provisions and meets federal requirements.

Reasons Supporting Proposal: Given the board adoption of a plan document, the rules are repetitive.

Statutory Authority for Adoption: RCW 28B.50.400.

Statute Being Implemented: RCW 28B.50.400.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state board for community and technical colleges, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Boesenberg, 1300 Quince Street S.E., Olympia, WA 98504, (360) 704-4303.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No impact.

A cost-benefit analysis is not required under RCW 34.05.328. State board is not a listed agency under RCW 34.05.328 and is therefore exempt from the provision.

March 29, 2013
Beth Gordon
Executive Assistant

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 131-16-010	Establishment of the state board retirement plan.
WAC 131-16-011	Definitions.
WAC 131-16-015	Retirement benefit goal established.
WAC 131-16-021	Employees eligible to participate in the retirement plan.
WAC 131-16-031	Participation in the plan.
WAC 131-16-040	Disability retirement provisions for plan participants.
WAC 131-16-045	Transfers to and from other plans.
WAC 131-16-050	Contribution rates established.
WAC 131-16-055	Options for self-directed investment of retirement plan contributions and accumulations.
WAC 131-16-056	Hardship withdrawals.
WAC 131-16-060	Cashability.
WAC 131-16-061	Supplemental retirement benefits.
WAC 131-16-062	Benefit options after termination of employment.
WAC 131-16-065	Optional retirement transition benefit.
WAC 131-16-066	Single sum death benefit to spouse beneficiaries.

WSR 13-08-058
PROPOSED RULES
HEALTH CARE AUTHORITY
(Medicaid Program)
[Filed March 29, 2013, 4:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-19-008.

Title of Rule and Other Identifying Information: New WAC 182-502-0022 Provider preventable conditions and amending WAC 182-550-1650 Adverse events, hospital-acquired conditions, and present on admission indicators.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Kiwi Conference Room 108, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf or directions can be obtained by calling (360) 725-1000), on May 7, 2013, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 8, 2013.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m., on May 7, 2013.

Assistance for Persons with Disabilities: Contact Kelly Richters by April 29, 2013, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules establish the agency's payment policy for services provided to clients on a fee-for-service basis or to a client enrolled in a managed care organization by health care professionals and inpatient hospitals that result in provider preventable conditions (PPC).

Reasons Supporting Proposal: These rules are required under 42 C.F.R. § 447.26.

Statutory Authority for Adoption: 42 C.F.R. § 447.26.

Statute Being Implemented: 42 C.F.R. § 447.26.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy L. Boedigheimer, Legal and Administrative Services, RPS, (360) 725-1306; Implementation and Enforcement: Ellen Silverman, Health Services, Health Care Benefits, (360) 725-1570.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes they do not impose more than minor costs for affected small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules [review] committee or applied voluntarily.

March 29, 2013
Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-550-1650 Adverse events, hospital-acquired conditions, and present on admission indicators. (((~~(1) The rules in this section apply to:~~

~~(a) Inpatient hospital claims with dates of admission on and after January 1, 2010;~~

~~(b) Payment or denial of payment for any inpatient hospital claims identified in (a) of this subsection, including medicaid supplemental or enhanced payments and medicaid disproportionate share hospital (DSH) payments or denial of payment;~~

~~(c) Adverse events, hospital-acquired conditions (HACs), and present on admission (POA) indicators (defined in subsection (2) of this section);~~

~~(d) Hospital requirements to report adverse events and HACs to the department (see subsection (4)(a) of this section);~~

~~(e) Hospital requests for retrospective utilization reviews and the related requirements to provide root cause analysis of events to the department (see subsection (4)(d) through (f) of this section); and~~

~~(f) Hospital requirements to use POA indicator codes on claims (see subsection (5)(a) of this section).~~

~~(2) The following definitions apply to this section:~~

~~(a) **"Adverse events"** (also known as "adverse health events" or "never events") are the events that must be reported to the department of health (DOH) under WAC 246-320-146. These serious reportable events are clearly identifiable, preventable, and serious in their consequences for patients, and frequently their occurrence is influenced by the policies and procedures of the health care organization.~~

~~(b) **"Hospital-acquired condition (HAC)"** is a condition that is reasonably preventable and was not present or identifiable at hospital admission but is either present at discharge or documented after admission. For medicaid payment purposes, the department considers a HAC to be a condition that:~~

~~(i) Is high cost or high volume, or both;~~

~~(ii) Results in the assignment of a case to a diagnosis related group (DRG) that has a higher payment when present as a secondary diagnosis;~~

~~(iii) Could reasonably have been prevented through the application of evidence-based guidelines; and~~

~~(iv) Does not conflict with medicare's hospital-acquired conditions policy (http://www.cms.hhs.gov/HospitalAcqCond/06_Hospital-Acquired_Conditions.asp#TopOfPage).~~

~~(c) **"Serious disability"** means a physical or mental impairment that substantially limits the major life activities of a patient.~~

~~(d) **"Present on admission (POA) indicator"** is a status code the hospital uses on an inpatient hospital claim that indicates if a condition was present or incubating at the time the order for inpatient admission occurs. A POA indicator can also identify a condition that develops during an outpatient encounter. (Outpatient encounters include, but are not limited to, emergency department visits, diagnosis testing, observation, and outpatient surgery.)~~

~~(e) **"Root cause analysis"** is a class of problem-solving methods aimed at identifying the root causes of events instead of addressing the immediate, obvious symptoms.~~

~~(3) **Medicare crossover inpatient hospital claims.** The department applies the following rules for these claims:~~

~~(a) If medicare denies payment for a claim at a higher rate for the increased costs of care under its HAC and/or POA indicator policies:~~

~~(i) The department limits payment to the maximum allowed by medicare;~~

~~(ii) The department does not pay for care considered nonallowable by medicare; and~~

~~(iii) The client cannot be held liable for payment.~~

~~(b) If medicare denies payment for a claim under its National Coverage Determination authority from Section 1862 (a)(1)(A) of the Social Security Act (42 U.S.C. 1395) for an adverse health event:~~

~~(i) The department does not pay the claim, any medicare deductible, and/or any co-insurance related to the inpatient hospital services; and~~

~~(ii) The client cannot be held liable for payment.~~

~~(4) **Inpatient hospital claims related to adverse events (excludes medicare crossover inpatient hospital claims discussed in subsection (3) of this section).** The department applies the following rules for these claims:~~

~~(a) When the department requests information from a hospital regarding adverse events identified by DOH, the hospital must provide the information requested for any affected medical assistance client (this includes both fee-for-service clients and clients enrolled in a managed care organization (MCO) contracted with the department). If no medical assistance client was affected by an adverse event, the hospital must provide a written response to the department with an assurance that no medical assistance clients were affected.~~

~~(b) The department does not pay for adverse events identified by DOH and/or identified through the department's retrospective utilization review process. Some HACs can become an adverse event if the:~~

~~(i) Patient dies or is seriously disabled; or~~

~~(ii) Level of severity is great, such as the patient develops level three or level four pressure ulcers.~~

~~(c) The client cannot be held liable for payment.~~

~~(d) A hospital may request a retrospective utilization review by the department, as described in WAC 388-550-1700 (6)(a) and (b)(iii), from the department or its designee to determine if the hospital is eligible for a partial payment for the adverse event.~~

~~(e) A hospital that requests a department retrospective utilization review of an adverse event must provide the department with the hospital's root cause analysis, as described in WAC 246-320-146 (3) and (4), of the adverse event claim.~~

~~(f) The health care information that is part of the retrospective utilization review, including the root cause analysis of the adverse event claim, is exempt from public disclosure under RCW 42.56.360 (1)(c).~~

~~(5) Inpatient hospital claims related to hospital-acquired conditions that do not qualify as an adverse event (excludes medicare crossover inpatient hospital claims discussed in~~

~~subsection (3) of this section). The department applies the following rules for these claims:~~

~~(a) The department reviews POA indicator codes on inpatient hospital claims in order to determine if a condition was present or incubating at the time the order for inpatient admission occurred, if a condition occurred during, or as a result of, hospital care, or if a condition developed during an outpatient encounter.~~

~~(i) All hospitals that have signed a core provider agreement with the department must provide information to the department by using POA indicator codes on each claim (refer to the table in this subsection).~~

~~(ii) These POA indicator codes must designate which procedures or complications were present on admission, and which occurred during, or as a result of, hospital care.~~

~~(iii) POA indicator codes are to be assigned to principal and secondary diagnosis (as defined in Section II of the Official Guidelines for Coding and Reporting), and the external cause of injury codes.~~

~~POA Indicator Codes~~	
~~Code~~	~~Reason for Code~~
~~Y~~	~~Diagnosis was present at time of inpatient admission.~~
~~N~~	~~Diagnosis was not present at time of inpatient admission.~~
~~U~~	~~Documentation insufficient to determine if condition was present at the time of inpatient admission.~~
~~W~~	~~Clinically undetermined. Provider unable to clinically determine whether or not the condition was present at the time of inpatient admission.~~

~~(b) The department does not make additional payments for services on inpatient hospital claims that are attributable to HACs and are coded with POA indicator codes "N" or "U." Specifically, for hospitals paid under the:~~

~~(i) Diagnostic related group (DRG) payment method, the department does not make additional payments for complications and comorbidities (CC) and major complications and comorbidities (MCC).~~

~~(ii) Per diem payment method, the department does not pay for days beyond the average length-of-stay (LOS) (defined in WAC 388-550-1050).~~

~~(iii) Departmental weighted costs-to-charges (DWCC) payment method, the department does not pay for services attributable to the HAC.~~

~~(iv) DRG and per diem outlier payment methods, the department does not pay for services attributable to the HAC.~~

~~(v) Ratio of costs-to-charges (RCC) payment method, the department does not pay for services attributable to the HAC.~~

~~(vi) Per case payment method, the department does not pay for services attributable to the HAC.~~

~~(6) The department denies payment for any HAC that results in death or serious disability.~~

~~(7) A hospital that disagrees with a department decision to deny payment or partial payment of an adverse event or hospital-acquired condition may follow the administrative appeal process in WAC 388-502-0220.~~)) Refer to WAC 182-502-0022 for the payment policy for provider preventable conditions.

NEW SECTION

WAC 182-502-0022 Provider preventable conditions (PPCs)—Payment policy. (1) This section establishes the agency's payment policy for services provided to medicaid clients on a fee-for-service basis or to a client enrolled in a managed care organization (defined in WAC 182-538-050) by health care professionals and inpatient hospitals that result in provider preventable conditions (PPCs).

(2) The rules in this section apply to:

(a) All health care professionals who bill the agency directly; and

(b) Inpatient hospitals.

(3) Definitions. The following definitions and those found in chapter 182-500 WAC apply to this section:

(a) **Agency -** See WAC 182-500-0010.

(b) **Health care-acquired conditions (HCAC) -** A condition occurring in any inpatient hospital setting (identified as a hospital acquired condition by medicare other than deep vein thrombosis/pulmonary embolism as related to a total knee replacement or hip replacement surgery in pediatric and obstetric patients.) Medicare's list of hospital acquired conditions is also available at: http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalAcqCond/Hospital-Acquired_Conditions.html.

(c) **Other provider preventable conditions (OPPC) -** The list of serious reportable events in health care as identified by the department of health in WAC 246-302-030 and published by the National Quality Forum.

(d) **Present on admission (POA) indicator -** A status code the hospital uses on an inpatient claim that indicates if a condition was present at the time the order for inpatient admission occurs.

(e) **Provider preventable condition (PPC) -** An umbrella term for hospital and nonhospital acquired conditions identified by the agency for nonpayment to ensure the high quality of medicaid services. PPCs include two distinct categories: Health care-acquired conditions (HCACs) and other provider-preventable conditions (OPPCs).

(4) **Health care-acquired condition (HCAC) -** The agency will deny or recover payment to health care professionals and inpatient hospitals for care related only to the treatment of the consequences of a HCAC.

(a) HCAC conditions include:

(i) Foreign object retained after surgery;

(ii) Air embolism;

(iii) Blood incompatibility;

(iv) Stage III and IV pressure ulcers;

(v) Falls and trauma:

(A) Fractures;

(B) Dislocations;

(C) Intracranial injuries;

(D) Crushing injuries;

(E) Burns;

(F) Other injuries.

(vi) Manifestations of poor glycemic control:

(A) Diabetic ketoacidosis;

(B) Nonketotic hyperosmolar coma;

(C) Hypoglycemic coma;

(D) Secondary diabetes with ketoacidosis;

(E) Secondary diabetes with hyperosmolarity.

(vii) Catheter-associated urinary tract infection (UTI);

(viii) Vascular catheter-associated infection;

(ix) Surgical site infection, mediastinitis, following coronary artery bypass graft (CABG);

(x) Surgical site infection following bariatric surgery for obesity:

(A) Laparoscopic gastric bypass;

(B) Gastroenterostomy; or

(C) Laparoscopic gastric restrictive surgery.

(xi) Surgical site infection following certain orthopedic procedures:

(A) Spine;

(B) Neck;

(C) Shoulder;

(D) Elbow.

(xii) Surgical site infection following cardiac implantable electronic device (CIED).

(xiii) Deep vein thrombosis/pulmonary embolism (DVT/PE) following certain orthopedic procedures:

(A) Total knee replacement; or

(B) Hip replacement.

(xiv) Latrogenic pneumothorax with venous catheterization.

(b) Hospitals must include the present on admission (POA) indicator when submitting inpatient claims for payment. The POA indicator is to be used according to the official coding guidelines for coding and reporting and the CMS guidelines. The POA indicator may prompt a review, by the agency or the agency's designee, of inpatient hospital claims with an HCAC diagnosis code when appropriate according to the CMS guidelines. The agency will identify professional claims using the information provided on the hospital claims.

(c) HCACs are based on current medicare inpatient prospective payment system rules with the inclusion of POA indicators. Health care professionals and inpatient hospitals must report HCACs on claims submitted to the agency for consideration of payment.

(5) **Other provider preventable condition (OPPC) -** The agency will deny or recoup payment to health care professionals and inpatient hospitals for care related only to the treatment of consequences of an OPPC when the condition:

(a) Could have reasonably been prevented through the application of nationally recognized evidence based guidelines;

(b) Is within the control of the hospital;

(c) Occurred during an inpatient hospital admission;

(d) Has a negative consequence for the beneficiary;

(e) Is auditable; and

(f) Is included on the list of serious reportable events in health care as identified by the department of health in WAC 246-302-030 effective on the date the incident occurred. The list of serious reportable events in health care, as of the publishing of this rule, includes:

(i) Surgical or invasive procedure events:

(A) Surgical or other invasive procedure performed on the wrong site;

(B) Surgical or other invasive procedure performed on the wrong patient;

(C) Wrong surgical or other invasive procedure performed on a patient;

(D) Unintended retention of a foreign object in a patient after surgery or other invasive procedure;

(E) Intraoperative or immediately postoperative/postprocedure death in an ASA Class 1 patient.

(ii) Product or device events:

(A) Patient death or serious injury associated with the use of contaminated drugs, devices, or biologics provided by the hospital;

(B) Patient death or serious injury associated with the use or function of a device in patient care, in which the device is used or functions other than as intended;

(C) Patient death or serious injury associated with intravascular air embolism that occurs while being cared for in a hospital.

(iii) Patient protection events:

(A) Discharge or release of a patient/resident of any age, who is unable to make decisions, to other than an authorized person;

(B) Patient death or serious injury associated with patient elopement;

(C) Patient suicide, attempted suicide, or self-harm that results in serious injury, while being cared for in a hospital.

(iv) Care management events:

(A) Patient death or serious injury associated with a medication error (e.g., errors involving the wrong drug, wrong dose, wrong patient, wrong time, wrong rate, wrong preparation, or wrong route of administration);

(B) Patient death or serious injury associated with unsafe administration of blood products;

(C) Maternal death or serious injury associated with labor or delivery in a low-risk pregnancy while being cared for in a hospital;

(D) Death or serious injury of a neonate associated with labor or delivery in a low-risk pregnancy;

(E) Patient death or serious injury associated with a fall while being cared for in a hospital;

(F) Any stage 3, stage 4, or unstageable pressure ulcers acquired after admission/presentation to a hospital (not present on admission);

(G) Patient death or serious injury resulting from the irretrievable loss of an irreplaceable biological specimen;

(H) Patient death or serious injury resulting from failure to follow-up or communicate laboratory, pathology, or radiology test results.

(v) Environmental events:

(A) Patient death or serious injury associated with an electric shock in the course of a patient care process in a hospital;

(B) Any incident in which systems designated for oxygen or other gas to be delivered to a patient contains no gas, the wrong gas, or is contaminated by toxic substances;

(C) Patient death or serious injury associated with a burn incurred from any source in the course of a patient care process in a hospital;

(D) Patient death or serious injury associated with the use of physical restraints or bedrails while being cared for in a hospital.

(vi) Radiologic events: Death or serious injury of a patient associated with the introduction of a metallic object into the magnetic resonance imaging (MRI) area.

(vii) Potential criminal event:

(A) Any instance of care ordered by or provided by someone impersonating a physician, nurse, pharmacist, or other licensed health care provider;

(B) Abduction of a patient of any age;

(C) Sexual abuse/assault on a patient within or on the grounds of a health care setting;

(D) Death or serious injury of a patient resulting from a physical assault (i.e., battery) that occurs within or on the grounds of a health care setting.

(6) Reporting PPCs.

(a) The agency requires inpatient hospitals to report PPCs (as appropriate according to (d) and (e) of this subsection) to the agency by using designated present on admission (POA) indicator codes and appropriate HCPCs modifiers that are associated:

(i) With claims for medical assistance payment; or

(ii) With courses of treatment furnished to clients for which medical assistance payment would otherwise be available.

(b) Health care professionals and inpatient hospitals must report PPCs associated with medicaid clients to the agency even if the provider does not intend to bill the agency.

(c) Use of the appropriate POA indicator codes informs the agency of the following:

(i) A condition was present at the time of inpatient hospital admission or at the time the client was first seen by the health care professional or hospital; or

(ii) A condition occurred during admission or encounter with a health care professional either inpatient or outpatient.

(d) Hospitals must notify the agency of an OPPC associated with an established medicaid client within forty-five calendar days of the confirmed OPPC in accordance with RCW 70.56.020. If the client's medicaid eligibility status is not known or established at the time the OPPC is confirmed, the agency allows hospitals thirty days to notify the agency once the client's eligibility is established or known.

(i) Notification must be in writing, addressed to the agency's chief medical officer, and include the OPPC, date of service, client identifier, and the claim number if the facility submits a claim to the agency.

(ii) Hospitals must complete the appropriate portion of the HCA 12-200 form to notify the agency of the OPPC. Agency forms are available for download at: http://maa.dshs.wa.gov/forms/.

(e) Health care professionals or designees responsible for or may have been associated with the occurrence of a PPC involving a medicaid client must notify the agency within forty-five calendar days of the confirmed PPC in accordance with chapter 70.56 RCW. Notifications must be in writing, addressed to the agency's chief medical officer, and include the PPC, date of service, and client identifier. Providers must complete the appropriate portion of the HCA 12-200 form to notify the agency of the PPC. Agency forms are available for download at http://maa.dshs.wa.gov/forms/.

(f) Failure to report, code, bill or claim PPCs according to the requirements in this section will result in loss or denial of payments.

(7) Identifying PPCs. The agency may identify PPCs as follows:

(a) Through the department of health (DOH); or

(b) Through the agency's program integrity efforts, including:

(i) The agency's claims payment system;

(ii) Retrospective hospital utilization review process (see WAC 182-550-1700);

(iii) The agency's provider payment review process (see WAC 182-502-0230);

(iv) The agency's provider audit process (see chapter 182-502A WAC); and

(v) A provider or client complaint.

(8) Payment adjustment for PPCs. The agency or its designee conducts a review of the PPC prior to reducing or denying payment.

(a) The agency does not reduce, recoup, or deny payment to a provider for a PPC when the condition:

(i) Existed prior to the initiation of treatment for that client by that provider. Documentation must be kept in the client's clinical record to clearly support that the PPC existed prior to initiation of treatment; or

(ii) Is directly attributable to a comorbid condition(s).

(b) The agency reduces payment to a provider when the following applies:

(i) The identified PPC would otherwise result in an increase in payment; and

(ii) The portion of the professional services payment directly related to the PPC, or treatment of the PPC, can be reasonably isolated for nonpayment.

(c) The agency does not make additional payments for services on claims for covered health care services that are attributable to HCACs and/or are coded with POA indicator codes "N" or "U."

(d) Medicare crossover claims. The agency applies the following rules for these claims:

(i) If medicare denies payment for a claim at a higher rate for the increased costs of care under its PPC policies:

(A) The agency limits payment to the maximum allowed by medicare;

(B) The agency does not pay for care considered nonallowable by medicare; and

(C) The client cannot be held liable for payment.

(ii) If medicare denies payment for a claim under its national coverage determination agency from Section 1862 (a)(1)(A) of the Social Security Act (42 U.S.C. 1395) for an adverse health event:

(A) The agency does not pay the claim, any medicare deductible or any coinsurance related to the inpatient hospital and health care professional services; and

(B) The client cannot be held liable for payment.

(9) The agency will calculate its reduction, denial or recoupment of payment based on the facts of each OPPC or

HCAC. Any overpayment applies only to the health care professional or hospital where the OPPC or HCAC occurred and does not apply to care provided by other health care professionals and inpatient hospitals, should the client subsequently be transferred or admitted to another hospital for needed care.

(10) Medicaid clients are not liable for payment of an item or service related to an OPPC or HCAC or the treatment of consequences of an OPPC or HCAC that would have been otherwise payable by the agency, and must not be billed for any item or service related to a PPC.

(11) Provider dispute process for PPCs.

(a) A health care professional or inpatient hospital may dispute the agency's reduction, denial or recoupment of payment related to a PPC as described in chapter 182-502A WAC.

(b) The disputing health care professional or inpatient hospital must provide the agency with the following information:

(i) The health care professional or inpatient hospital's assessment of the PPC; and

(ii) A complete copy of the client's medical record and all associated billing records, to include itemized statement or explanation of charges.

WSR 13-08-066
PROPOSED RULES
OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2012-32—Filed April 1, 2013, 4:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-01-089.

Title of Rule and Other Identifying Information: Surplus line broker licensing requirements.

Hearing Location(s): Insurance Commissioner's Office, TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on May 7, 2013, at 1:30 p.m.

Date of Intended Adoption: May 8, 2013.

Submit Written Comments to: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, e-mail rulescoordinator @oic.wa.gov, fax (360) 586-3109, by May 6, 2013.

Assistance for Persons with Disabilities: Contact Lorrie [Lorie] Villaflores by May 6, 2013, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commissioner is proposing this amendment to the existing rule to eliminate the requirement for surplus line brokers to have a concurrent Washington insurance producer license in order to be licensed as a surplus line broker. This amendment to the rule will permit the commissioner to license both resident and nonresident surplus line brokers without requiring a concurrent Washington insurance producer license, thereby making Washington licensing requirements reciprocal with other states.

Reasons Supporting Proposal: The federal Graham-Leach-Bliley Act requires states to reciprocate in regards to insurance producer licensing. Current Washington rules require that for both resident and nonresident surplus line brokers to become licensed, the broker must have a concurrent Washington insurance producer license. Other states do not have the requirement that nonresident surplus line brokers have a concurrent producer license in that state in order to be licensed as a surplus line broker.

Statutory Authority for Adoption: RCW 48.02.060 and 48.15.015.

Statute Being Implemented: RCW 48.15.070 and 48.15.073.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7036; Implementation and Enforcement: John Hamje, P.O. Box 40256, Olympia, WA 98504-0256, (360) 725-7262.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Because this rule would simply eliminate the requirement that surplus line brokers also be licensed as insurance producers with both property and casualty lines of authority, it eliminates a licensing cost for surplus line brokers without adding any new costs. Therefore, no small business economic impact statement is required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7036, fax (360) 586-3109, e-mail rulescoordinator@oic.wa.gov.

April 1, 2013
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2008-06, filed 1/6/09, effective 7/1/09)

WAC 284-15-010 Brokers—Surplus line brokers—Qualifications and examination. (1) Each applicant for a resident surplus line broker's license must take and pass the required examination and pay the required fee prior to acting as a surplus line broker. The examination will test an applicant's qualifications and competence in all areas of surplus line insurance. Current information about testing procedures and examination dates is available on the commissioner's web site at: www.insurance.wa.gov.

(2) ((~~Before the commissioner can issue a surplus line broker's license, the applicant must be licensed in this state as an insurance producer with both property and casualty lines of authority. This requirement may be satisfied if the licenses are issued simultaneously.~~

~~(3)~~)) The commissioner deems that a nonresident person holding a surplus line broker's license, or the equivalent, in the applicant's home state is qualified, competent and trustworthy and, therefore, meets the minimum standards of this

state for holding a surplus line broker's license. For that reason, the commissioner will waive the Washington surplus line broker's examination for a person who has and maintains a current resident surplus line broker's license, or the equivalent, in the applicant's home state.

WSR 13-08-067
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed April 1, 2013, 4:43 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-14-034.

Title of Rule and Other Identifying Information: Amending WAC 246-470-010 and 246-470-030; and new WAC 246-470-035, prescription monitoring program. Updating the rules to reflect changes in law, including: Adding language to establish alternative data reporting requirements for veterinarians reporting the dispensing of controlled substances to the department of health's prescription monitoring program (PMP); and clarifying that for dispensers other than veterinarians, drugs dispensed for one day use do not need to be reported to the PMP.

Hearing Location(s): Washington State Department of Health, Town Center 2, Room 158, 111 Israel Road S.E., Tumwater, WA 98501, on May 8, 2013, at 11:00 a.m.

Date of Intended Adoption: May 13, 2013.

Submit Written Comments to: Lisa Hodgson, P.O. Box 47852, Olympia, WA 98504-7852, e-mail http://www3.doh.wa.gov/policyreview/, fax (360) 236-4901, by May 8, 2013.

Assistance for Persons with Disabilities: Contact Lisa Hodgson by May 1, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules are intended to implement 2012 legislation, SSB 6105 (chapter 192, Laws of 2012). The proposed rules establish alternative PMP data reporting requirements for veterinarians that are related to the animal patient, types of prescriptions that need to be reported, and when the data must be reported. For dispensers other than veterinarians, SSB 6105 changed previous PMP reporting requirements that all controlled substance dispensing must be reported. The bill now requires reporting only drugs dispensed for more than one day use.

Reasons Supporting Proposal: SSB 6105 requires the department, in collaboration with the veterinary board of governors, to establish alternative requirements for veterinarians reporting the dispensing of controlled substances to the PMP. The bill also changed PMP reporting requirements for other dispensers. The proposed rules are needed to implement changes in the PMP law.

Statutory Authority for Adoption: RCW 70.225.025.

Statute Being Implemented: RCW 70.225.020; SSB 6105 (chapter 192, Laws of 2012).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Kitty A. Slater, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4861; Implementation and Enforcement: Chris Baumgartner, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4806.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Lisa Hodgson, 111 Israel Road S.E., Tumwater, WA 98501, phone (360) 236-2927, fax (360) 236-4901, e-mail Lisa.Hodgson@doh.wa.gov.

April 1, 2013
Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 11-16-041, filed 7/27/11, effective 8/27/11)

WAC 246-470-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise:

(1) "Authentication" means information, electronic device, or certificate provided by the department or their designee to a data requestor to electronically access prescription monitoring information. The authentication may include, but is not limited to, a user name, password, or an identification electronic device or certificate.

(2) "Controlled substance" has the same meaning provided in RCW 69.50.101.

(3) "Department" means the department of health.

(4) "Dispenser" means a practitioner or pharmacy that delivers to the ultimate user a schedule II, III, IV, or V controlled substance or other drugs identified by the board of pharmacy in WAC 246-470-020, but does not include:

(a) A practitioner or other authorized person who only administers, as defined in RCW 69.41.010, a controlled substance or other drugs identified by the board of pharmacy in WAC 246-470-020; ((~~or~~))

(b) A licensed wholesale distributor or manufacturer, as defined in chapter 18.64 RCW, of a controlled substance or other drugs identified by the board of pharmacy in WAC 246-470-020; or

(c) A veterinarian licensed under chapter 18.92 RCW. Data submission requirements for veterinarians are included in WAC 246-470-035.

(5) "Patient" means the person or animal who is the ultimate user of a drug for whom a prescription is issued or for whom a drug is dispensed.

(6) "Patient address" means the current geographic location of the patient's residence. If the patient address is in care of another person or entity, the address of that person or entity is the "patient address" of record. When alternate addresses are possible, they must be recorded in the following order of preference:

(a) The geographical location of the residence, as would be identified when a telephone is used to place a 9-1-1 call; or

(b) An address as listed by the United States Postal Service; or

(c) The common name of the residence and town.

(7) "Pharmacist" means a person licensed to engage in the practice of pharmacy.

(8) "Prescriber" means a licensed health care professional with authority to prescribe controlled substances.

(9) "Prescription monitoring information" means information submitted to and maintained by the prescription monitoring program.

(10) "Program" means the prescription monitoring program established under chapter 70.225 RCW.

(11) "Valid photographic identification" means:

(a) A driver's license or instruction permit issued by any United States state or province of Canada. If the patient's driver's license has expired, the patient must also show a valid temporary driver's license with the expired card.

(b) A state identification card issued by any United States state or province of Canada.

(c) An official passport issued by any nation.

(d) A United States armed forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents.

(e) A merchant marine identification card issued by the United States Coast Guard.

(f) A state liquor control identification card. An official age identification card issued by the liquor control authority of any United States state or Canadian province.

(g) An enrollment card issued by the governing authority of a federally recognized Indian tribe located in Washington, if the enrollment card incorporates security features comparable to those implemented by the department of licensing for Washington drivers' licenses and are recognized by the liquor control board.

AMENDATORY SECTION (Amending WSR 11-16-041, filed 7/27/11, effective 8/27/11)

WAC 246-470-030 Data submission requirements for dispensers. (1) A dispenser shall provide to the department the dispensing information required by RCW 70.225.020 and this section for all scheduled II, III, IV, and V controlled substances and for drugs identified by the board of pharmacy ((~~pursuant to~~)) under WAC 246-470-020. Only drugs dispensed for more than one day use must be reported.

(((~~(1)~~))) (2) Dispenser identification number. A dispenser shall acquire and maintain an identification number issued to dispensing pharmacies by the National Council for Prescription Drug Programs or a prescriber identifier issued to authorized prescribers of controlled substances by the Drug Enforcement Administration, United States Department of Justice.

(((~~(2)~~))) (3) Submitting data. A dispenser shall submit data to the department electronically, not later than one week from the date of dispensing, and in the format required by the department.

(a) A dispenser shall submit for each dispensing the following information and any additional information required by the department:

(i) Patient identifier. A patient identifier is the unique identifier assigned to a particular patient by the dispenser;

(ii) Name of the patient for whom the prescription is ordered including first name, middle initial, last name, and generational suffixes, if any;

(iii) Patient date of birth;

(iv) Patient address;

(v) Patient gender;

(vi) Drug dispensed;

(vii) Date of dispensing;

(viii) Quantity and days supply dispensed;

(ix) Refill information;

(x) Prescriber identifier;

(xi) Prescription issued date;

(xii) Dispenser identifier;

(xiii) Prescription fill date and number;

(xiv) Source of payment indicated by one of the following:

(A) Private pay (cash, change, credit card, check);

(B) Medicaid;

(C) Medicare;

(D) Commercial insurance;

(E) Military installations and veterans affairs;

(F) Workers compensation;

(G) Indian nations;

(H) Other; and

(xv) When practicable, the name of person picking up or dropping off the prescription, as verified by valid photographic identification.

(b) A nonresident, licensed pharmacy that delivers controlled substances, as defined in RCW 18.64.360, is required to submit only the transactions for patients with a Washington state zip code.

(c) Data submission requirements do not apply to:

(i) The department of corrections or pharmacies operated by a county for the purpose of providing medications to offenders in state or county correctional institutions who are receiving pharmaceutical services from a state or county correctional institution's pharmacy. A state or county correctional institution's pharmacy must submit data to the program related to each offender's current prescriptions for controlled substances upon the offender's release from a state or county correctional institution.

(ii) Medications provided to patients receiving inpatient services provided at hospitals licensed under chapter 70.41 RCW or patients of such hospitals receiving services at the clinics, day surgery areas, or other settings within the hospital's license where the medications are administered in single doses; or medications provided to patients receiving outpatient services provided at ambulatory surgical facilities licensed under chapter 70.230 RCW.

NEW SECTION

WAC 246-470-035 Dispensing and data submission requirements for veterinarians. A veterinarian licensed under chapter 18.92 RCW shall provide to the department the dispensing information required by RCW 70.225.020 and as provided in this section for all schedule II, III, IV and V con-

trolled substances and for drugs identified by the board of pharmacy under WAC 246-470-020.

(1) Dispenser identification number. A veterinarian shall acquire and maintain a prescriber identifier issued to authorized prescribers of controlled substances by the Drug Enforcement Administration, United States Department of Justice.

(2) Submitting data. A veterinarian shall:

(a) Report data for schedule II, III, IV, and V controlled substances, and other required drugs identified by the board of pharmacy under WAC 246-470-020, dispensed for a fourteen-day supply or more;

(b) Report data using either electronic or nonelectronic methods provided by the department;

(c) Submit data quarterly. Data must be reported on the following schedule:

Reporting Period	Report Due Date
January - March	April 10
April - June	July 10
July - September	October 10
October - December	January 10

(d) Report the following data elements to the department for each schedule II, III, IV, and V controlled substance and other required drugs dispensed for a fourteen-day supply or more:

(i) Name of the animal for whom the drug is dispensed including name of the animal or the animal's species (example: Feline) and the owner's last name;

(ii) Animal's date of birth, or if date of birth is unknown, enter January 1st of the estimated birth year;

(iii) Owner's name including first name, middle initial, last name, and generational suffixes, if any;

(iv) Owner's address;

(v) Drug dispensed;

(vi) Date the drug was dispensed;

(vii) Quantity and days supply dispensed;

(viii) Prescriber identifier;

(ix) Dispenser identifier; and

(x) When practicable, the identification number from a valid photo identification card of the owner.

WSR 13-08-069
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed April 1, 2013, 4:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-14-069.

Title of Rule and Other Identifying Information: Chapter 246-831 WAC proposing a new chapter for reflexology, including the certification requirements.

Hearing Location(s): Department of Health, Town Center 2, Room 158, 111 Israel Road S.E., Tumwater, WA 98501, on May 8, 2013, at 9:00 a.m.

Date of Intended Adoption: May 13, 2013.

Submit Written Comments to: Kris Waidely, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, e-mail http://www3.doh.wa.gov/policyreview/, fax (360) 236-2901, by May 8, 2013.

Assistance for Persons with Disabilities: Contact Kris Waidely by May 6, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules describe the credentialing requirements to practice reflexology in the state of Washington.

Reasons Supporting Proposal: ESSB 6103 (chapter 137, Laws of 2012) creates a new credential and requires certification of reflexologists. Rules are needed for the new profession to establish the minimum education, examination, and certification requirements for reflexologists. Fees for this new credential were adopted in November 2012.

Statutory Authority for Adoption: ESSB 6103 (chapter 137, Laws of 2012).

Statute Being Implemented: Chapter 18.108 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kris Waidely, P.O. Box 47852, Olympia, WA 98504-7852, (360) 236-4847.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kris Waidely, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4847, fax (360) 236-2901, e-mail kris.waidley@doh.wa.gov. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(ii) exempts rules that relate only to internal governmental operations that are not subject to violation by a nongovernment party.

April 1, 2013
Mary C. Selecky
Secretary

NEW SECTION

WAC 246-831-010 Credentialing requirements. (1) An applicant for a reflexologist certification must be eighteen years of age or older.

(2) An applicant for a reflexologist certification must submit to the department:

(a) A completed application on forms provided by the secretary;

(b) Fees as required in WAC 246-831-990;

(c) Evidence of completion of:

(i) A reflexology education program approved by the secretary;

(ii) An examination approved by the secretary;

(iii) A jurisprudence examination approved by the secretary;

(iv) Four hours of AIDS education and training as required in chapter 246-12 WAC, Part 8.

(d) Any additional documents or information requested by the secretary.

NEW SECTION

WAC 246-831-020 Documents in a foreign language. All application documents, as required in WAC 246-831-010, submitted in a foreign language must be accompanied by an accurate translation of those documents into English. Translated documents must bear a notarized affidavit certifying that the translator is competent in both the language of the document and the English language and that the translation is a true and complete translation of the foreign language original. The applicant is responsible for all costs of translation of all documents.

NEW SECTION

WAC 246-831-030 Display of credential and advertising. (1) A certified reflexologist shall conspicuously display his or her credential in his or her principal place of business.

(2) If the certified reflexologist does not have a principal place of business, or conducts business in any other location, he or she shall have a copy of his or her credential available for inspection while performing services within his or her authorized scope of practice.

(3) A certified reflexologist's name and certification number must conspicuously appear on all of the reflexologist's advertisements.

NEW SECTION

WAC 246-831-040 Educational requirements. Training in reflexology must include a minimum of two hundred hours of instruction. One hour of instruction is defined as fifty minutes of actual instructional time. The two hundred hours shall consist of the following:

(1) Thirty hours of reflexology, theory, history, zones, reflex points and relaxation response, and contraindications;

(2) Forty hours of study of body systems as related to reflexology:

(a) The study of the leg, feet, hands and outer ears as structures;

(b) Hands-on palpation of landmarks with sensory identification of palpated areas;

(c) A map of reflexes as they are anatomically reflected on the feet, hands and outer ears; and

(d) How the reflexes are affected by stimulation to the feet, hands and outer ears through hands-on experience.

(3) Thirty hours of anatomy and physiology;

(4) Five hours of business practice involving ethics, business standards and local/state laws and ordinances pertaining to the practice of reflexology;

(5) Twenty-five hours or more of supervised practicum or clinical work; and

(6) Seventy hours of additional homework hours that can include giving and documenting client sessions as well as other written work.

NEW SECTION

WAC 246-831-050 Examination. (1) All applicants must take and pass the American Reflexology Certification Board (ARCB) written examination or another examination approved by the secretary.

(2) The secretary will accept the passing score established by the testing company for examinations approved by the secretary.

(3) An applicant who fails an approved examination may take an approved examination up to two additional times.

(4) After three failed examinations, the secretary may invalidate the applicant's application and remedial education may be required before future examinations can be taken.

NEW SECTION

WAC 246-831-060 Waiver of examination. An applicant may obtain a waiver of the examination for certification as a reflexologist.

(1) The applicant must apply for certification between July 1, 2013 and July 1, 2014.

(2) In addition to the requirements in RCW 18.108.131, the applicant must provide to the department:

(a) A completed application on forms provided by the secretary;

(b) Fees as required in WAC 246-831-990;

(c) Verification of four clock hours of AIDS education and training as required in chapter 246-12 WAC, Part 8; and

(d) Evidence of completion of a jurisprudence examination approved by the secretary.

(3)(a) Verification that the applicant has practiced reflexology as a licensed massage practitioner for at least five years prior to July 1, 2013; or

(b) Evidence satisfactory to the secretary that the applicant has, prior to July 1, 2013, successfully completed a course of study in a reflexology program approved by the secretary; or

(c) Verification that the applicant holds a current reflexology credential in another state or a territory of the United States which the secretary determines has substantially equivalent credentialing standards to those of this state.

NEW SECTION

WAC 246-831-070 Applicants licensed in another state. The secretary may issue a person credentialed as a reflexologist in another state or territory of the United States a reflexology certification. The applicant must provide to the department:

(1) Evidence of meeting substantially equivalent education requirements as defined in WAC 246-831-040; and

(2) Verification of a current active credential from any state or territory of the United States.

NEW SECTION

WAC 246-831-080 Equipment and sanitation. (1) The definitions in this subsection apply throughout this section unless the context clearly states otherwise.

(a) "Cleaning" means the removal of all visible dust, soil, and other foreign material, usually done using water with soaps, detergents, or enzymatic products along with physical action such as brushing. Cleaning precedes disinfection.

(b) "Disinfection" means a process that kills or destroys nearly all disease-producing microorganisms. Disinfectants are used on inanimate objects. Disinfectants can include those registered with the U.S. Environmental Protection Agency (EPA). Disinfectants must be used according to product instructions.

(2) The certified reflexologist shall ensure:

(a) All surfaces, instruments, and equipment including massage and hydrotherapy equipment that come in contact with the body are cleaned and disinfected. Any instrument or equipment that is used on one person must be cleaned and disinfected before being used on another person.

(b) If impervious materials are used, they must cover, full length, all massage tables, pads or chairs, directly under fresh sheets and linens or disposable paper sheets.

(c) Soap, or waterless cleanser, and clean towels are provided for use by clients and employees.

(d) Linens used for one person are laundered or cleaned before they are used by any other person. Linens must be stored in a sanitary manner.

(e) All soiled linens are immediately placed in a covered receptacle.

(f) All instruments and equipment are clean, well maintained, and in good repair.

NEW SECTION

WAC 246-831-090 Health, sanitation, and facility standards. All schools, programs, and apprenticeship programs must have adequate facilities and equipment available for students learning reflexology. All facility equipment must be maintained in accordance with local rules and ordinances in addition to those imposed by this chapter. Instructional and practice equipment must be similar to that found in common occupational practice. Programs must make available an adequate reference library appropriate to the subjects being taught. Reference materials may be in electronic format.

NEW SECTION

WAC 246-831-100 Approval of school, program, or apprenticeship program. The secretary will consider for approval any school, program, or apprenticeship program which meets the requirements as outlined in this chapter.

(1) The authorized representative of the school or program, or the administrator of the apprenticeship program shall request approval of a school, program, or apprenticeship program on a form provided by the department.

(2) The authorized representative of the school or program, or the administrator of the apprenticeship program may request approval of the school or program, as of the date of the application or retroactively to a specified date.

(3) The application for approval of a school, program, or apprenticeship program must include, but not be limited to, documentation required by the secretary pertaining to:

(a) Syllabus;

(b) Qualifications of instructors;

(c) Training locations, and facilities;

(d) Outline of curriculum plan specifying all subjects and length in hours such subjects are taught;

(e) Class objectives; and

(f) A sample copy of one of each of the following exams:

(i) Reflexology, theory, history, zones, reflex points and relaxation response, and contraindications;

(ii) Body systems;

(iii) Anatomy and physiology; and

(iv) Business standards and ethics.

(4) Any school, program, or apprenticeship program that is required to be licensed by private vocational education under chapter 28C.10 RCW or Title 28B RCW, or any other statute, must complete these requirements before being considered by the secretary for approval.

(5) The secretary will evaluate the application and may conduct a site inspection of the school, program, or apprenticeship program, prior to granting approval.

(6) Upon completion of the evaluation of the application, the secretary may grant or deny approval or grant approval conditioned upon appropriate modification to the application.

(7) If the secretary notifies the school, program, or apprenticeship program of his or her intent to deny an application or grant conditional approval, the authorized representative of the school or program, or the administrator of the apprenticeship program, may request review of that decision. The request for review must be made in writing within thirty days of the date of the secretary's decision. The review process will be conducted in compliance with chapter 34.05 RCW. If review is not requested within thirty days of the date of the secretary's decision, the secretary's decision on that application is final. The authorized representative of the school or program, or the administrator of the apprenticeship program, may submit a new application for the secretary's consideration.

(8) The authorized representative of an approved school or program or the administrator of an apprenticeship program shall notify the secretary in writing of all significant changes with respect to information provided in the application within thirty days of such changes.

(9) The secretary may inspect or review an approved school, program, or apprenticeship program at reasonable intervals for compliance or to investigate a complaint. The secretary may withdraw approval if the secretary finds failure to comply with the requirements of law, administrative rules, or representations in the application.

(10) If the secretary notifies the school, program, or apprenticeship program of his or her intent to withdraw approval, the authorized representative of the school or program, or the administrator of the apprenticeship program, may request review of that decision. The request for review must be made in writing within thirty days of the date of the secretary's decision. The review process will be conducted in compliance with chapter 34.05 RCW. If review is not requested within thirty days of the date of the secretary's decision, the secretary's decision on withdrawal of approval is final. The authorized representative of a school or program or the administrator of an apprenticeship agreement must cor-

rect the deficiencies which resulted in withdrawal of the secretary's approval before requesting reinstatement of approval.

WSR 13-08-070
WITHDRAWAL OF PROPOSED RULES
OFFICE OF INSURANCE COMMISSIONER
(By the Code Reviser's Office)
[Filed April 2, 2013, 8:41 a.m.]

WAC 284-43-851 and 284-43-870, proposed by the office of insurance commissioner in WSR 12-19-101 appearing in issue 12-19 of the State Register, which was distributed on October 3, 2012, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 13-08-071
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed April 2, 2013, 8:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-04-071.

Title of Rule and Other Identifying Information: Chapter 16-324 WAC, Rules for the certification of seed potatoes, the agency is proposing to amend the certification requirements for seed potatoes as a result of a petition submitted by the Washington seed potato commission (WSPC). The proposed amendments:

(1) Add an additional laboratory test for potato virus Y (PVY) for all lots entered for post-harvest testing;

(2) Eliminate the latent virus testing requirement for potato virus X (PVX);

(3) Add definitions for "seed potato farm" and "ELISA testing";

(4) Allow nuclear generation seed potatoes to be recertified if tests are negative for bacterial ring rot disease;

(5) Revise the requirement for physical separation in the field between lots of different classes (generations) or different varieties;

(6) Change Generation 1 (G1) requirement that the seed potatoes must be produced in a field that has not been planted with potatoes from three years to one year; and

(7) Require all G1 lots, with the exception of those lots of less than a quarter acre that are planted back on the same farm, to be post-harvest tested.

Hearing Location(s): WSPC, 108 South Interlake Road, Main Conference Room, Moses Lake, WA 98837, on May 7, 2013, at 2:00 p.m.; and at the Washington State University, Whatcom County Extension, 1000 North Forest Street, Suite 201, Main Conference Room, Bellingham, WA 98225, on May 10, 2013, at 11:00 a.m.

Date of Intended Adoption: May 24, 2013.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail hgonzales @agr.wa.gov, fax (360) 902-2094, by May 10, 2013.

Assistance for Persons with Disabilities: Contact Henri Gonzales by April 30, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the seed potato certification program is to provide disease/pest-free seed potato planting stock to the commercial potato industry. Some diseases/pests of potatoes can greatly decrease yields, appearance, and reduce storage quality. Recently, new strains of viruses have emerged that show little or no foliar symptoms but cause severe necrosis in tubers. These latent or cryptic viruses are not readily detected during visual inspections, so can be unknowingly sold in certified seed. If these seed pieces with latent virus infections are planted, tuber necrosis in the resulting crop may cause substantial losses for commercial potato growers and processors. This proposal is intended to address the problem of tuber necrosis in commercial production through more rigorous post-harvest testing. The proposal also lightens some of the planting requirements, allows recertification of nuclear generation plantings if tested negative for bacterial ring rot disease, and eliminates the testing for PVX.

Reasons Supporting Proposal: The purpose of seed potato certification is to manage pathogens carried in or on seed pieces in order to limit their detrimental effects on the yields and quality of potato production. Historically, seed potato certification has been based upon growing season inspections to visually detect and quantify diseases in seed potato lots. However, these new strains of viruses show little or no foliar symptoms making it necessary to have more rigorous post-harvest laboratory testing requirements. The proposed changes will bring the certification program more into harmony with adjoining states. Both the seed potato and potato industry has requested changes to the existing certification requirements in order to adequately protect growers.

Statutory Authority for Adoption: RCW 15.14.015 and chapter 34.05 RCW.

Statute Being Implemented: RCW 15.14.015.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WSPC, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Tom Wessels, 1111 Washington Street S.E., Olympia, WA 98504-2560, (360) 902-1984.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

SUMMARY OF PROPOSED RULES: The Washington state department of agriculture (WSDA) plant services program is proposing to amend chapter 16-324 WAC.

The purpose of this chapter is to establish rules for the certification of seed potatoes.

The proposed amendments to this chapter include:

- Revising the production requirements to allow the recertification of nuclear generation seed potatoes after bacterial ring rot is detected in a field.
- Eliminating the latent virus testing requirements.
- Strengthening the post-harvest test requirements by requiring all G1 lots, with the exception of those lots less than 1/4 acre that are planted back on the same farm, to be post-harvest tested.
- Requiring laboratory testing for PVY in all lots entered for post-harvest testing.
- Revising the growing requirements regarding the method of separating seed potato lots of different classes (generations) or varieties.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT (SBEIS): Chapter 19.85 RCW, the Regulatory Fairness Act, requires an analysis of the economic impact proposed rules will have on regulated small businesses. Preparation of an SBEIS is required when proposed rules will impose more than minor costs for compliance or have the potential of placing an economic impact on small businesses that is disproportionate to the impact on large businesses. "Minor cost" means a cost that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater, or one percent of annual payroll. "Small business" means any business entity that is owned and operated independently from all other businesses and has fifty or fewer employees.

INDUSTRY ANALYSIS: The seed potato certification program is a voluntary program that currently has eight participants, seven of which are small businesses. Although the certification program is voluntary, chapter 16-482 WAC, the seed potato quarantine, requires all commercial potato growers in this state to plant with certified seed. Both seed potato growers and commercial potato growers fall under the North American Industry Classification System code 1112. There are approximately three hundred fifty commercial potato growers in the state, most of which are small businesses.

The purpose of seed potato certification is to manage pathogens carried in or on seed pieces, in order to limit their detrimental effects on the yields and quality of potato production. Historically, seed potato certification has been based upon growing season inspections to visually detect and quantify disease in seed potato lots. Lots that will be grown for seed - that is, lots to be recertified in the following year(s) - are also required to be post-harvest tested. In a post-harvest test, a sample from the seed potato lot is grown out in a greenhouse and inspected during the winter. Lots that exceed disease tolerances established in chapter 16-324 WAC are downgraded or denied certification.

Recently, new strains of viruses have emerged that show little or no foliar symptoms but cause severe necrosis in tubers. These latent or cryptic viruses are not readily detected during visual inspections, so can be unknowingly sold in certified seed. If these seed pieces with latent virus infections are planted, tuber necrosis in the resulting crop may cause substantial losses for commercial potato growers and processors. This proposal is intended to strengthen the seed potato certification program and address the problem of tuber necrosis in commercial production through a more rigorous post-harvest test.

The department has analyzed the proposed rule amendments and has determined that adopting this proposal would incur more than minor costs for some seed potato growers but will provide substantial benefits to commercial potato growers by lessening the incidence of tuber necrosis.

INVOLVEMENT OF SMALL BUSINESSES: This proposal was developed by a committee of seed potato growers and WSDA personnel appointed by the WSPC at its bimonthly meeting in April 2012. The committee members met with commercial potato growers in Skagit County to discuss ways of mitigating high virus incidence in seed potatoes. All substantial amendments in this proposal were recommended by the seed potato growers. In addition, the plant services program notified any seed potato growers that were not immediately involved in drafting the revision.

COST OF COMPLIANCE: RCW 19.85.040 directs agencies to analyze the costs of compliance for businesses required to comply with the proposed rule, including costs of equipment, supplies, labor, professional services, and increased administrative costs. Agencies must also consider whether compliance with the rule will result in loss of sales or revenue. RCW 19.85.040 directs agencies to determine whether the proposed rule will have a disproportionate cost impact on small businesses by comparing the cost of compliance for small business with the cost of compliance for the ten percent of the largest businesses required to comply with the proposed rules. Agencies are to use one or more of the following as a basis for comparing costs:

- Cost per employee;
- Cost per hour of labor; or
- Cost per one hundred dollars of sales.

The program has opted not to look at the options above as none are relevant to determining the cost of this proposal to small businesses in this situation.

Current certification rules require seed potato lots that will be sold for recertification to be post-harvest tested. This proposal would add a requirement for all G1 lots, except those on less than 1/4 acres or planted back on the same farm, to be post- harvest tested. Additionally, due to these proposed rule changes, during post-harvest testing lots would be laboratory tested for PVY. However, the cost of PVY testing would be offset by eliminating the existing requirement for laboratory testing for PVX of nuclear and G1 lots. All other amendments to this proposal will be cost neutral. The economic impact of this proposal on seed potato growers depends on the number of G1 lots, the size of those lots, and whether the lots are planted back on the same seed potato farm.

In the seed potato certification process, a lot originates from a single plant that has been tested and found free of eight regulated pathogens. Seed growers multiply these lots by successive asexual propagations of up to six field generations, successively designated nuclear and G1 through G5. Each successive generation has a greater yield and a higher maximum allowable level (i.e., tolerance) for virus, so the value is inversely proportional to its generation. Generally, nuclear and G1 lots are planted back for recertification by

either the same grower or by another seed grower. Commercial potato growers usually plant the higher generations (e.g., G4 or G5 planting stock), although some who are concerned about virus content will pay more for an earlier generation lot (e.g., G3).

The cost of this proposal to a seed potato grower would depend on the number of G1 lots of greater than 1/4 acre. Of the eight seed potato growers in Washington, five grew G1 lots in 2012. Based on G1 lots certified in 2012, adoption of this proposal would cost each grower of G1 lots $100 - $5,000 in additional post-harvest test fees. The remaining three seed potato growers would not be affected by this proposal because they do not grow lower generation (nuclear and G1) seed potatoes. A seed potato grower could minimize the effects of this proposal by reducing or eliminating G1 lots.

Analysis of Cost of Compliance: The program analyzed the cost of compliance anticipated by regulated small businesses and found that this proposed amendment to chapter 16-324 WAC would have more than minor costs to four program participants (all small businesses) through an overall increase in the total fees paid for additional post-harvest testing of G1 seed potato lots. Growers submit samples for post-harvest testing to a commercial greenhouse which plants and grows the samples. When the plants emerge, a WSDA plant services specialist inspects the plants for virus symptoms and collects samples from the emerged plants for laboratory testing. The commercial greenhouse charges the grower $200 per lot with a lesser amount for lots less than one acre. WSDA does not propose increasing the certification fees the agency charges.

Analysis of Disproportionate Economic Impact: When costs associated with proposed rules are more than minor, the Regulatory Fairness Act requires a comparison of the costs to small businesses with those of ten percent of the largest businesses in the regulated industry. Analysis has shown that the costs small businesses will incur to comply with the proposed rules are more than minor and are disproportionate between small and large business entities.

Most of the seed potato farms in Washington are family farms that have operated for multiple generations. The exception is a large commercial potato company that grows seed potatoes for their own use. This company does not grow early generation seed, so they will not be impacted by this proposal. The economic impact of this proposal is directly proportional to the number of G1 seed lots grown and is unrelated to the size of the business.

Mitigating Disproportionate Costs: There will be no disproportional costs to small businesses from this proposal.

This proposal will require program participants growing G1 seed potato lots to post-harvest test all G1 seed lots except those less than 1/4 acre that are planted back on the same farm. Although the additional testing requirements will increase the production costs of G1 seed potato lots, it will also increase the value of the tested lots. Overall, this proposal will have a neutral effect on jobs.

CONCLUSION: To comply with the Regulatory Fairness Act, chapter 19.85 RCW, the program has analyzed economic impacts on small businesses, and although some costs imposed by the rule are more than minor, these costs cannot be mitigated because the additional testing is necessary to meet the current threat to potato production caused by the new strains of PVY. The additional production costs to seed potato farms growing G1 seed lots will result in higher quality seed potatoes for commercial potato growers. The agency was petitioned by the WSPC to amend the seed potato certification rule. The commercial potato industry supports the changes to the existing certification requirements in order to adequately protect growers.

Please contact Tom Wessels if you have any questions at (360) 902-1984 or twessels@agr.wa.gov.

A copy of the statement may be obtained by contacting Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-2061, fax (360) 902-2094, e-mail hgonzales @agr.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.-328 (5)(a)(i).

April 2, 2013
Brad White, Ph.D.
Acting Assistant Director

Chapter 16-324 WAC

((~~RULES FOR THE~~)) CERTIFICATION OF SEED POTATOES

AMENDATORY SECTION (Amending WSR 07-11-010, filed 5/3/07, effective 6/3/07)

WAC 16-324-361 Definitions. "Certification" means that the lot of seed potatoes was inspected and meets the requirements of this chapter.

"Cull" means any lot of potatoes rejected for certification for any reason.

"Department" means the department of agriculture of the state of Washington.

"Director" means the director of the department of agriculture or his/her duly appointed representative.

"Disease tested" means tested for and found free of all of the following diseases: Potato virus A (PVA), potato virus M (PVM), potato virus S (PVS), potato virus X (PVX), potato virus Y (PVY), potato leafroll virus (PLRV), potato mop top virus (PMTV), potato spindle tuber viroid (spindle tuber), *Erwinia carotovora* ssp. *carotovora* (soft rot), *Erwinia carotovora* ssp. *atroseptica* (black leg) and *Clavibacter michiganense* spp. ((~~*sepedonicum*~~)) *sepedonicus* (ring rot).

"ELISA testing" means laboratory testing by enzyme-linked immunosorbant assay or other equivalent methodologies.

"Micropropagated" means potato stock propagated using aseptic laboratory techniques and culture media to promote plant tissue growth.

"Microtubers" means tubers produced in vitro by a micropropagated plant or plantlet.

"Minitubers" means tubers produced under controlled greenhouse conditions.

"Nematode" means plant parasitic nematodes capable of infesting potatoes, including but not limited to the genus *Meloidogyne.*

"Nuclear stock" means plantlets, microtubers, minitubers, or seed potatoes produced from prenuclear stock, and grown in the field for the first time.

"Plot" means a seed potato planting that is 0.25 acre or less in size.

"Powdery scab" means the disease caused by the fungus *Spongospora subterranea*.

"Prenuclear" means micropropagated plants or tubers and plants or minitubers produced in a greenhouse.

"Quarantine pest" means a pest of potential economic importance and not yet present in the state, or present but not widely distributed and being officially controlled.

"Recertification" means the process of certifying a seed lot that was certified the previous year.

"Rogue" means removing diseased or undesirable plants, including all associated plant parts, from a seed potato field.

"Seed lot" means a field, in whole or in part, or a group of fields producing seed potatoes, or the potato tubers harvested from a seed potato field.

"Seed potato farm" means a seed potato enterprise, including all land, equipment, storages and all facilities used to produce certified seed potatoes.

"Seed potatoes" means vegetatively propagated tubers used for potato production.

"Seed source" means seed potatoes produced by an individual grower within a particular seed production area.

"Trace" means a barely perceivable indication of plant disease that amounts to less than 0.001 percent of sample.

"Tolerance" means the maximum acceptable percentage of potato plants or tubers that is diseased, infected by plant pests, defective or off-type based on visual inspection or laboratory testing by the director or other authorized person.

"Unit method" means a method of planting in which cut seed pieces from one tuber are dropped consecutively in a row, or in which all tubers from one plant are dropped consecutively in a row.

AMENDATORY SECTION (Amending WSR 08-10-039, filed 4/30/08, effective 5/31/08)

WAC 16-324-385 Production requirements. (1) A grower ((~~is~~)) may not ((~~eligible to produce nuclear, generation 1, or generation 2 seed potatoes~~)) recertify any seed lots, except nuclear, if ring rot has been detected on his or her seed potato farm during the previous two years. Nuclear seed potatoes may be recertified by the original grower if laboratory testing of the seed by a laboratory approved by the department shows negative results for ring rot.

(2) Prenuclear class.

(a) Prenuclear seed lots must be derived from disease tested micropropagated plants. All testing methods and laboratories must be approved by the department.

(b) A minimum of one percent (and not less than twenty samples) of prenuclear seed produced in a greenhouse must be tested and found free of potato virus X (PVX), potato virus Y (PVY), potato virus S (PVS), potato leafroll virus (PLRV), *Erwinia carotovora* ssp. *caratovora* (soft rot), *Erwinia carotovora* ssp. *atroseptica* (black leg), and *Clavibacter michiganense* ssp. ((~~*sependonicum*~~)) *sepedonicus* (ring rot).

(c) The department will inspect all facilities used in the production of prenuclear class seed potatoes on a periodic basis. Department approval is necessary in order to utilize these facilities.

(3) Nuclear class.

(a) Nuclear class seed potatoes must be propagated entirely from prenuclear plants.

(b) Each nuclear class seed lot must be distinctly separated in storage and in the field.

(c) If a ground rig is used for spraying, wide enough spacing between rows must be left, so that tires will not touch plants during the growing season.

(d) Growers must plant cut seed and single drop seed separately, with single drop seed identified.

(4) Generations 1, 2, 3, 4 and 5.

(a) Growers must leave a distinct separation ((~~of at least six feet unplanted or planted to some other crop~~)) between lots of seed potatoes from different classes. ((~~A similar~~)) The same separation must be left between different varieties, unless the varieties are readily distinguishable by visual observation. The separation must consist of one of the following:

(i) A strip of land at least six feet in width, that is unplanted or planted with another crop; or

(ii) Visible markers such as flags in every corner of the lot, and also at intervals not to exceed one hundred yards.

(b) When more than one lot of seed potatoes is planted in the same field, growers must stake or mark the identity of each lot.

AMENDATORY SECTION (Amending WSR 07-11-010, filed 5/3/07, effective 6/3/07)

WAC 16-324-391 Eligibility requirements. (1) Only seed potatoes derived from plants that have been disease tested and certified by an official certification agency are eligible for certification.

(2) Only seed lots that meet or exceed the minimum requirements as established in this chapter are eligible for certification. A seed lot that has more than a trace amount of virus disease noted during any field inspection is not eligible for recertification, unless it has been post-harvest tested and meets the minimum standards established in WAC 16-324-420.

(3) A post-harvest test is required for seed lots that will be recertified, except when planted back on the same seed potato farm.

(4) In order to be eligible for certification in Washington state, seed lots from other states or countries must be eligible for recertification in the state or country of origin and must meet the requirements of this chapter.

(5) A seed lot blended from two or more different sources of seed is not eligible for recertification.

(6) A seed lot infected with powdery scab is not eligible for recertification.

(7) Generation 5 (G5) seed lots are not eligible for recertification.

AMENDATORY SECTION (Amending WSR 07-11-010, filed 5/3/07, effective 6/3/07)

WAC 16-324-392 Isolation requirements. (1) ((~~The department must approve~~)) All field locations for nuclear and generation 1 ((~~field locations~~)) production must have prior approval from the department.

(2) Generation 2 through generation 5 must be isolated by at least three hundred fifty feet from all noncertified potatoes.

(3) When ring rot is found in a field planted with more than one lot of seed potatoes, the department will reject the entire field ((~~unless at least six feet between lots has been left unplanted or planted to some other crop~~)).

AMENDATORY SECTION (Amending WSR 04-12-026, filed 5/26/04, effective 6/26/04)

WAC 16-324-393 Land requirements. (1) The department will not accept any field infested with nematodes.

(2) Detection of ring rot in a field will make that field ineligible for production of certified seed potatoes for three years. Presence of volunteer potato plants in a field with ring rot history will disqualify the current field crop for certification. Plants outside of the defined row are considered volunteers.

(3) Nuclear class seed potatoes must be produced in a field that has not been planted with potatoes for at least four years. (((~~New ground is preferred.~~)))

(4) Generation 1 ((~~class seed potatoes must be produced in a field that has not been planted with potatoes for at least three years.~~

(~~5) Generation~~)), 2, 3, 4, and 5 class seed potatoes must be produced in a field that has not been planted with potatoes during the previous year unless the prior potato crop was certified seed potatoes of an earlier class of the same variety. Volunteer plants from a previously planted seed potato crop will cause the class designation of the current crop to be changed to the appropriate generation of the volunteer plants.

AMENDATORY SECTION (Amending WSR 07-11-010, filed 5/3/07, effective 6/3/07)

WAC 16-324-396 Sanitation requirements. (1) Chemicals used in the sanitation of equipment should be those recommended by the *Pacific Northwest Plant Disease ((~~Control~~)) Management Handbook*. This handbook is available online at: http://pnwhandbooks.org/plantdisease/. Vector control must be maintained throughout the growing season as recommended by the *Pacific Northwest ((~~Plant Disease Control~~)) Insect Management Handbook*. This handbook is available online at: http://pnwpest.org/pnw/insects/.

(2) Seed stocks entered for certification ((~~must~~)) should be planted and harvested prior to handling any other seed stock. The earliest generation ((~~must~~)) should be handled prior to later generations within the program.

(3) Only department-approved containers shall be used during the digging, storage, and packing process.

AMENDATORY SECTION (Amending WSR 04-12-026, filed 5/26/04, effective 6/26/04)

WAC 16-324-398 Field inspection disease tolerance. (1) Compliance with a 0.0% tolerance is not intended, nor should it be construed, to mean that the lot inspected is free from the disease. It means that the disease was not detected during visual inspections of the seed lot.

(2) First and second field inspection tolerances, expressed as percentages.

Factor	Nuclear	G 1	G 2	G 3	G 4	G5
Varietal mixture	((~~0.00~~)) 0.10	((~~0.00~~)) 0.10	((~~0.01~~)) 0.20	((~~0.25~~)) 0.30	((~~0.25~~)) 0.40	((~~0.25~~)) 0.50
Mosaic	0.00	0.10	((~~0.20~~)) 0.25	0.50	((~~1.00~~)) 0.75	((~~2.00~~)) 1.00
Leafroll	0.00	((~~0.05~~)) 0.10	((~~0.10~~)) 0.25	((~~0.25~~)) 0.30	((~~0.25~~)) 0.50	((~~0.25~~)) 0.50
Total visible virus	0.00	((~~0.10~~)) 0.20	((~~0.30~~)) 0.50	((~~0.75~~)) 0.80	1.25	((~~2.25~~)) 1.50
Phytoplasmas	0.00	0.00	0.10	0.20	0.50	1.00
Black leg	0.00	0.10	0.50	1.00	2.00	*
Ring rot	0.00	0.00	0.00	0.00	0.00	0.00
Nematode	0.00	0.00	0.00	0.00	0.00	0.00
Spindle tuber viroid and other quarantined pests	0.00	0.00	0.00	0.00	0.00	0.00

*Tolerance for black leg does not apply to G5.

AMENDATORY SECTION (Amending WSR 07-11-010, filed 5/3/07, effective 6/3/07)

WAC 16-324-409 Post-harvest test requirements. (1) Post-harvest testing ((~~of all seed classes is optional, except as required in WAC 16-324-391 and 16-324-399. Seed lots which fail the minimum requirements of the field inspection standards are not eligible for post-harvest testing.~~)) is required for the following lots:

(a) All Generation 1 lots except lots that are less than 0.25 acre and planted back on the same seed potato farm;

(b) Seed lots sold for recertification; and

(c) Lots for which a post-harvest test is required by WAC 16-324-399.

(2) Seed lots submitted for post-harvest testing in subsection (1)(a) and (b) of this section must also be ELISA tested for PVY.

(3) A minimum of four hundred tubers must be submitted for each seed lot entered for post-harvest testing. Seed lots less than ((~~one~~)) 0.25 acre in size must submit a minimum of four tubers per total hundred weight with a minimum of fifty tubers.

(((~~3~~))) (4) The applicant is responsible for the cost of post-harvest testing.

(((~~4~~))) (5) Seed lots in the post-harvest test which fail to comply with the disease tolerance requirements set forth in WAC 16-324-420 are not eligible for recertification.

(a) The applicant must notify in writing all receivers of any seed lot that failed to comply with post-harvest tolerances set forth in WAC 16-324-420.

(b) Acceptance of a seed lot that fails to comply with the tolerances set forth in WAC 16-324-420 must be based on a written buyer/seller agreement. The grower must provide the department with a copy of the written agreement within thirty days of receiving the post-harvest results.

AMENDATORY SECTION (Amending WSR 97-11-028, filed 5/14/97, effective 6/14/97)

WAC 16-324-420 Post-harvest test tolerances.

TOLERANCE TABLE: PERCENT DISEASE

Factor	NUCLEAR	G1	G2	G3	G4	G5
Leafroll	0.00	0.25	0.50	0.75	1.00	2.00
Mosaic (((~~well defined~~))) (includes ELISA for PVY)	0.00	0.25	0.50	1.00	1.50	2.00
Total virus	0.00	0.50	0.75	1.00	1.50	3.00

AMENDATORY SECTION (Amending WSR 02-12-010, filed 5/23/02, effective 6/23/02)

WAC 16-324-431 Digging, storage and premarketing. (1) Each seed lot must be stored with its identity maintained. All tubers from a unit planting method must be numbered and stored as an identifiable unit for the next year's planting.

(2) Each storage or room containing more than one seed lot must have ((~~a solid~~)) an impermeable barrier between each lot.

(a) The department will reject any seed lot in which ring rot or nematode is found.

(b) Noncertified potatoes must not be stored in the same facility as certified seed potatoes.

(3) The applicant must notify in writing receivers of any seed lot found to be infected with ring rot. The applicant must provide the department with a copy of this notification when it is sent to the receiver.

(4) All seed classes must be graded according to the United States Standards for Grades of Seed Potatoes.

(5) Each container or sack must be identified with an official Washington seed potato tag listing the grower's name, address, seed lot number, net weight, variety and classification unless such information is printed on the sacks or containers.

(6) The department issues tags to the grower. The grower is required to comply with all of the following:

(a) Tag the sack or container as the potatoes are sorted;

(b) Allow inspection of graded seed potatoes at any time;

(c) Remove the tags from out-of-grade potatoes under the supervision of the department; and

(d) Return all unused tags to the department.

(7) The department may issue a compliance agreement authorizing the grower to tag seed potatoes.

(8) Bulk shipments must be identified with the information required in subsection (5) of this section.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 16-324-401	Latent virus testing requirements.
WAC 16-324-402	Latent virus tolerance.

WSR 13-08-083
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed April 3, 2013, 9:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-14-098 and 12-23-044.

Title of Rule and Other Identifying Information: Chapter 246-827 WAC, Medical assistants, proposing a new chapter for the implementation of the medical assistant credential as authorized by chapter 18.360 RCW.

Proposed amendments to WAC 246-826-990 Health care assistant—Fees and renewal cycle, to establish procedures to transition health care assistant (HCA) credentials to new medical assistant (MA) credentials.

Hearing Location(s): Department of Health, Point Plaza East, Room 152/153, 310 Israel Road S.E., Tumwater, WA 98501, on May 7, 2013, at 9:00 a.m.

Date of Intended Adoption: May 14, 2013.

Submit Written Comments to: Brett Cain, P.O. Box 47852, Olympia, WA 98504, e-mail http://www3.doh.wa.gov/policyreview/, fax (360) 236-2901, by May 7, 2013.

Assistance for Persons with Disabilities: Contact Cece Zenker at (360) 236-4633 by May 1, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules create new chapter 246-827 WAC. The rules establish requirements for obtaining an MA credential, supervision of MAs, MA tasks, and related requirements. This proposal also amends WAC 246-827-990 to describe how the department will transfer an HCA credential active on July 1, 2013, to one of three corresponding credentials: Medical assistant-certified (MA-C), medical assistant-hemodialysis technician (MA-H), or medical assistant-phlebotomist (MA-P).

Reasons Supporting Proposal: Rule making is necessary to create enforceable standards for the medical assistant credentials. ESSB 6237 grants the department authority to establish education and training standards. It also grants the department authority to limit the drugs that an MA-C may administer based on risk, class, or route. Rules are also necessary to establish administrative procedures and administrative requirements to establish the medical assistant credentials. Rules setting the fees for these credentials were adopted in November 2012.

Statutory Authority for Adoption: Chapter 153, Laws of 2012, chapter 18.360 RCW, and RCW 43.70.280.

Statute Being Implemented: Chapter 153, Laws of 2012.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Brett Cain, 111 Israel Road S.E., Tumwater, WA 98504, (360) 236-4766.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Section 1. What is the scope of the proposed rule package? ESSB 6237, enacted in 2012 and codified as chapter 18.360 RCW, establishes the medical assistant profession. The bill directed the secretary of the department of health (department) to adopt rules setting the minimum qualifications to obtain a medical assistant credential.

As directed by ESSB 6237, the medical assistant credential will replace the current HCA credentials under chapters 18.135 RCW and 246-826 WAC. On July 1, 2013, the department plans to begin transferring the HCA credentials of approximately 17,000 individuals to a new medical assistant credential, and on that date the department will stop issuing new HCA credentials.

The proposed rules create new chapter 246-827 WAC, Medical assistants. This proposal also amends WAC 246-827-990 Health care assistant—Fees and renewal cycle, to describe how the department will transfer an HCA credential active on July 1, 2013, to one of three corresponding credentials: MA-C, MA-H, or MA-P.

The proposed rules establish certification requirements for MA-C, MA-H and MA-P, and registration requirements for one new category of medical assistant. Medical assistants may only work under the delegation and supervision of a Washington state licensed physician, osteopath, naturopath, optometrist, physician's assistant, osteopathic physician's assistant, advanced registered nurse practitioner, or registered nurse. The proposed rules clarify standards for a health care practitioner to delegate tasks to a medical assistant, and the level of supervision the health care practitioner must provide when delegating tasks.

ESSB 6237 directs the department to set minimum requirements to obtain a medical assistant credential. Because the bill does not prescribe these requirements, the department must adopt rules to establish enforceable standards. The proposed rules specify the minimum qualifications to obtain credential as MA-C, MA-H, or MA-P. The rules also set medication administration and injection limitations for MA-Cs based on risk, class, and route.

The proposal also establishes the minimum requirements for a health care practitioner, clinic, or group practice to endorse an individual as a medical assistant-registered (MA-R). This is a new credential created by ESSB 6237; there is no corresponding health care assistant credential. An MA-R endorsement is not transferable from one practitioner or practice setting to another. The proposed rules describe what an MA-R must do to maintain his or her credential when changing employment from an endorsing provider, clinic or group practice, and starting work with another.

Assumptions: ESSB 6237, passed during the 2012 legislative session, creates four medical assistant credentials in Washington state. The law has been codified as chapter 18.360 RCW and is effective July 1, 2013. RCW 18.360.020 states that anyone practicing as a medical assistant must obtain a credential from the Washington state department of health (department). The law (RCW 18.360.050) also sets the scope of practice for the different categories of medical assistants. Therefore, some uncredentialed assistive personnel may be required to obtain a credential to perform the tasks they currently perform as they are tasks that are included in the scope of the new medical assistant credential.

Because of the unique tasks that their unlicensed assistive personnel perform, the department has identified that podiatrists will likely be required to have currently unlicensed staff member credentialed as a medical assistant-registered under the proposed rules. There are no minimum training qualifications to obtain a medical assistant-registered credential. For the purposes of this small business economic impact statement (SBEIS), the department assumes that each licensed podiatrist operates as an independent business, and each podiatrist will endorse one medical assistant-registered and pay the credentialing fee of $90 every two years. The average cost per podiatry business would be $45 per year. This average cost per business is below the threshold required for analyzing the small business economic impact to podiatry businesses.

As a result, the remainder of this analysis focuses on economic impacts to optometry businesses.

The medical assistant law provides that current health care assistants will transition to one of the new categories of

medical assistant. Optometrists are not approved supervisors and delegators for health care assistants. They are supervisors and delegators for medical assistants under the new law. Also, their unlicensed personnel, including optometric technicians and optometric assistants, currently administer prescription eye drops. Under ESSB 6237 and the proposed rules, the administration of drugs may only be performed by medical assistant-certified.

Because these unlicensed assistive personnel administer medication and perform other tasks included in the scope of medical assistant-certified, this analysis assumes that each optometry office in Washington state will be required to hire a medical assistant-certified. It is also assumed that current unlicensed optometry assistive personnel may not have the training required to obtain a medical assistant-certified credential when these rules are scheduled to take effect on July 1, 2013. Therefore, for the purposes of this SBEIS, [the] department assumes that each optometry office will hire one full-time medical assistant-certified.

Wage data: Optometry assistants are classified as medical assistants by the United States Bureau of Labor Statistics. According to the Washington state employment security department, medical assistants in Washington earn an average of $16.76[1] per hour with an average annual salary of $34,190. The department polled optometry businesses regarding current optometry assistant wages and reported wages of $11.50 to $19 (a mean of $16.25) an hour with an average annual salary of $33,150[2].

Section 2. Which businesses are impacted by the proposed rule package? What are their North American Industry Classification System (NAICS) codes? What are their minor cost thresholds?

NAICS Code (4, 5 or 6 digit)	NAICS Business Description	# of Businesses in WA	Minor Cost Threshold = 1% of Average Annual Payroll	Minor Cost Threshold = 0.3% of Average Annual Receipts
621320	Optometrists' offices (e.g., centers, clinics)	507	$1,806	$1,930

Section 3. What is the average cost per business of the proposed rule? This analysis assumes that optometry businesses will need to employ one state credentialed medical assistant-certified as of the date these rules take effect, currently scheduled for July 1, 2013. It also assumes that there would be insufficient time before these rules take effect for an optometrist to have one of his/her optometry assistants obtain the training required in the proposed rules to become a medical assistant-certified.

It is also noted that optometrists may be able to reduce nearly all of the cost impacts of these rules by the licensed optometrists performing administration of prescription eye drops themselves, and having one or more of their other optometry assistive personnel obtain a medical assistant-registered credential. If this option is chosen, the average annual cost per business would be $45 per year for state credentialing for each optometry assistive personnel who obtains a medical assistant-registered credential.

Cost Category	Description	Cost
Reporting		$0
Recordkeeping		$0
Training		$0
Professional Services (e.g., engineers, lawyers)		$0
Equipment (type)		$0
Supplies (type, amount)		$0
Labor (show hours multiplied by cost per hour)	Medical assistant-certified - 2040 (hrs. per year) x 16.76	$34,190
	Optometric assistant - 2040 (hrs. per year) x 16.25	$33,150
Administration		$0
Lost Sales or Revenue		$0
Other		n/a
Total Average Cost[3]	Difference in cost of employing a qualified medical assistant-certified compared to cost of employing an optometric assistant	$34,190 minus $33,150, equals
		$1,040

Section 4. Does the rule impose more than minor costs on impacted businesses?

Average cost per optometry business	$1,040
Minor cost threshold - 1% payroll	$1,806
Minor cost threshold - .03% of receipts	$1,930

Does the average cost per business exceed both of the minor cost thresholds? No.

Section 5. Does the rule have a disproportionate impact on small businesses? After research and consultation with three member[s] of the Washington state board of optometric physicians, it has been determined that there are large businesses (having more than fifty employees) operating in Washington state who employ optometrists as primary care providers. This may include businesses such as Group Health, Costco, Providence, Wal-Mart, Clarus Eye Centre, among others. These large businesses may have greater capacity or more options for absorbing the impact of the rules. Group Health, for example, may have a health care

assistant already on staff whose credential will transfer to medical assistant-certified credential and may assist in performing administration of prescription eye drops.

Is the average cost per employee for small businesses more than the average cost per employee for the largest businesses? Yes.

Section 6. Did the department make an effort to reduce the impact of the rule?

The department made every effort to reduce the impact of this rule on health care providers. The department worked diligently to assure that stakeholders throughout the state were involved in the design and implementation of the rules.

- Did the department reduce, modify, or eliminate substantive regulatory requirements?
  ESSB 6237 creates four medical assistant credentials in Washington state. The bill was passed during the 2012 legislative session and has been codified as chapter 18.360 RCW. The law is effective July 1, 2013. RCW 18.360.020 states that no person may practice as a medical [assistant] unless they are certified or registered under RCW 18.360.040. RCW 18.360.050 sets the scope of practice for the different categories of medical assistants.
- Did the department simplify, reduce, or eliminate recordkeeping and reporting requirements;
  RCW 18.360.040 requires that registrations based on an endorsement to perform specific medical tasks signed by a supervising health care practitioner must be filed with the department. The law mandates a certain level of recordkeeping and reporting.
- Did the department reduce the frequency of inspections?
  Discipline action taken by the department is complaint-driven. The department does not routinely inspect health care practitioner offices or clinics.
- Did the department delay compliance timetables?
  The law mandates that the rules be effective July 1, 2013. The law does not currently allow for the department to delay compliance. Persons performing medical assisting duties after June 30, 2013, must obtain a medical assistant credential from the department.
  However, a bill has been introduced in the 2013 Washington state legislature that would allow medical assistants-registered to administer eye drops and topical ointments. If passed, an optometrist would not need to employ a medical assistant-certified. The bill would also allow the department to delay adoption of the medical assistant-registered rules only, to give time to implement the bill.
- Did the department reduce or modify fine schedules for noncompliance?
  Persons performing medical assistant duties after June 30, 2013, must obtain a medical assistant credential from the department. Nonlicensed persons acting as medical assistants after the above date may be subject to unlicensed practice laws under the Uniform Disciplinary Act, chapter 18.130 RCW. There is no language in the law that allows the department to modify fine schedules.
- Did the department create or implement any other mitigation techniques?
  The law provides that a medical assistant-certified credential is required to administer medications. The department may not by rule allow medical assistants-registered to administer medications. The department worked diligently to assure that stakeholders throughout the state were involved in the design and implementation of the rules.

Section 7. Did the department involve small businesses in the rule development process? Stakeholders from both the Optometric Physicians of Washington and the Washington State Podiatric Medical Association attended rules workshops held by the department.

Section 8. Will businesses have to hire or fire any employees because of the requirements in the rule? The department's analysis concludes that optometrists in Washington state who do not have other qualified staff persons to administer prescription eye drops will be required to either hire a new medical assistant-certified or require their current unlicensed assistive staff person to obtain the medical assistant-certified credential. Washington state podiatrists may need to reallocate staff duties and require some assistive staff to obtain the medical assistant-registered credential.

[1] Data taken [from] the Washington state employment security department https://fortress.wa.gov/esd/employmentdata/reports-publications/occupational-reports/occupations-in-demand.

[2] Data from poll of several Washington state optometry businesses.

[3] Calculation assumes optometry offices replace once [one] current unlicensed optometric assistant with one medical assistant-certified to comply with the medical assistant law.

A copy of the statement may be obtained by contacting Brett Cain, 111 Israel Road S.E., Tumwater, WA 98501, phone (360) 236-4766, fax (360) 236-2901, e-mail brett.cain @doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Brett Cain, 111 Israel Road S.E., Tumwater, WA 98501, phone (360) 236-4766, fax (360) 236-4766 [236-2901], e-mail brett.cain@doh.wa.gov.

April 3, 2013
Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 11-20-092, filed 10/4/11, effective 12/1/11)

WAC 246-826-990 Health care assistant fees and renewal cycle. (1) Certificates must be renewed every two years as provided in WAC 246-826-050 and chapter 246-12 WAC, Part 2.

(2) ((~~If a health care assistant who holds a current active credential leaves employment with a facility or practitioner and returns to employment with a facility or practitioner that previously employed the health care assistant, and more than two years has passed since that health care assistant's employment with the previous facility or practitioner ended, the health care assistant must complete a new credential application and pay the application fee. However, that health care assistant is not required to pay the late renewal penalty~~

~~and the expired credential reissuance fee.~~)) On July 1, 2013, all active certified health care assistant credentials will expire and be renewed as medical assistant credentials pursuant to RCW 18.360.080 and 43.70.280. The department will issue a medical assistant credential to a person who had an active health care assistant credential as of June 30, 2013. No fee will be required of the credential holder for this transition.

(3) The following nonrefundable fees will be charged:

Title of Fee	Fee
Initial certification	$113.00
Renewal	113.00
Expired credential reissuance	55.00
Recertification	108.00
Late renewal penalty	55.00
Duplicate certificate	30.00

NEW SECTION

WAC 246-827-0010 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates otherwise:

(1) **"Direct visual supervision"** means the supervising health care practitioner is physically present and within visual range of the medical assistant.

(2) **"Health care practitioner"** means a physician licensed under chapter 18.71 RCW; an osteopathic physician and surgeon licensed under chapter 18.57 RCW; or acting within the scope of their respective licensure, a podiatric physician and surgeon licensed under chapter 18.22 RCW, a registered nurse or advanced registered nurse practitioner licensed under chapter 18.79 RCW, a naturopath licensed under chapter 18.36A RCW, a physician assistant licensed under chapter 18.71A RCW, an osteopathic physician assistant licensed under chapter 18.57A RCW, or an optometrist licensed under chapter 18.53 RCW.

(3) **"Hemodialysis"** is a procedure for removing metabolic waste products or toxic substances from the human body by dialysis.

(4) **"Immediate supervision"** means the supervising health care practitioner is on the premises and available for immediate response as needed.

(5) **"Legend drug"** means any drug which is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by practitioners only.

(6) **"Medical assistant"** without further qualification means a person credentialed under chapter 18.360 RCW as a:

(a) Medical assistant-certified;

(b) Medical assistant-registered;

(c) Medical assistant-hemodialysis technician; and

(d) Medical assistant-phlebotomist.

(7) **"Medical assistant-hemodialysis technician"** means a patient care dialysis technician trained in compliance with federal requirements for end stage renal dialysis facilities.

(8) **"Secretary"** means the secretary of the department of health or the secretary's designee.

GENERAL

NEW SECTION

WAC 246-827-0100 Applicability. A person shall obtain a medical assistant credential from the secretary in order to practice as a medical assistant. "Practice as a medical assistant" means the person assists a health care practitioner by providing direct patient health care including treatment, self-care instruction, patient education, and administration of medication. A person employed by a health care practitioner or facility is not practicing as a medical assistant as defined in this chapter if he or she only performs the following tasks:

(1) Accounting;

(2) Insurance reimbursement;

(3) Maintaining medication and immunization records;

(4) Obtaining and recording patient history;

(5) Preparing and maintaining examination and treatment areas;

(6) Reception;

(7) Scheduling;

(8) Telephone and in person screening limited to intake and gathering of information; or

(9) Similar administrative tasks.

NEW SECTION

WAC 246-827-0110 Delegation and supervision. (1) The medical assistant functions in a dependent role when providing direct patient care under the delegation and supervision of a health care practitioner.

(2) "Delegation" means direct authorization granted by a health care practitioner to a medical assistant to perform the functions authorized in RCW 18.360.050 which fall within the scope of practice of the health care practitioner and the training and experience of the medical assistant.

(3) A medical assistant may only accept delegated tasks when:

(a) The health care practitioner follows the requirements of RCW 18.360.060;

(b) The task can be performed without requiring the exercise of judgment based on clinical knowledge;

(c) The results of the task are reasonably predictable;

(d) The task can be performed without a need for complex observations or critical decisions;

(e) The task can be performed without repeated clinical assessments; and

(f) The task, if performed improperly, would likely not present life-threatening consequences or the danger of immediate and serious harm to the patient.

(4) A medical assistant may not accept delegation of acts that are not within his or her scope of practice.

(5) A medical assistant is responsible and accountable for his or her practice based upon and limited to:

(a) Scope of his or her education or training;

(b) Scope of practice set forth in law and applicable sections of this chapter;

(c) Demonstration of competency to the delegating health care practitioner;

(d) Written documentation of competency as required by this rule and the health care employer's policies and procedures. The documentation will be maintained by the health care employer.

(6) A medical assistant who has transitioned from a health care assistant credential as of July 1, 2013, may not accept delegated tasks unless he or she has received the necessary education or training to safely and competently perform the task.

NEW SECTION

WAC 246-827-0120 General standards. (1) The medical assistant shall have the ability to read, write, and converse in the English language.

(2) The medical assistant shall have knowledge and understanding of the laws and rules regulating medical assistants, including chapter 18.130 RCW, Uniform Disciplinary Act.

(3) The medical assistant shall function within his or her scope of practice.

(4) The medical assistant shall obtain instruction from the delegating health care practitioner and demonstrate competency before performing new or unfamiliar duties which are in his or her scope of practice.

(5) The medical assistant shall demonstrate a basic understanding of the patient's rights and responsibilities.

(6) The medical assistant must respect the client's right to privacy by protecting confidential information and may not use confidential health care information for other than legitimate patient care purposes or as otherwise provided in chapter 70.02 RCW, the Uniform Health Care Information Act.

(7) The medical assistant shall comply with all federal and state laws and regulations regarding patient rights and privacy.

NEW SECTION

WAC 246-827-0130 U.S. armed forces equivalency. An applicant with relevant military training or experience satisfies the training or experience requirements of this chapter unless the secretary determines that the military training or experience is not substantially equivalent to the standards of this state.

MEDICAL ASSISTANT CREDENTIALS

NEW SECTION

WAC 246-827-0200 Medical assistant-certified—Training and examination. Certification requirements - Applicants for a medical assistant-certified credential must meet the following requirements:

(1) Successful completion of one of the following medical assistant training programs:

(a) Postsecondary school or college program accredited by the Accrediting Bureau of Health Education Schools (ABHES) or the Commission of Accreditation of Allied Health Education Programs (CAAHEP);

(b) Postsecondary school or college accredited by a regional or national accrediting organization approved through the U.S. Department of Education, which includes a minimum of seven hundred twenty clock hours of training in medical assisting skills, including a clinical externship of no less than one hundred sixty hours;

(c) A registered apprenticeship program administered by a department of the state of Washington unless the secretary determines that the apprenticeship program training or experience is not substantially equivalent to the standards of this state. The apprenticeship program shall ensure a participant who successfully completes the program is eligible to take one or more examinations identified in subsection (2) of this section; or

(d) The secretary may approve an applicant who submits documentation that he or she completed postsecondary education with a minimum of seven hundred twenty clock hours of training in medical assisting skills. The documentation must include proof of training in all of the duties identified in RCW 18.360.050(1) and a clinical externship of no less than one hundred sixty hours.

(2) Pass one of the following examinations within three years prior to submission of an initial application for this credential:

(a) Certified medical assistant examination through the American Association of Medical Assistants (AAMA);

(b) Registered medical assistant certification examination through the American Medical Technologists (AMT);

(c) Clinical medical assistant certification examination through the National Healthcareer Association (NHA); or

(d) National certified medical assistant examination through the National Center for Competency Testing (NCCT).

NEW SECTION

WAC 246-827-0220 Medical assistant-certified—Application—Interim certification. (1) Application requirements - Applicants for a medical assistant-certified credential shall submit the following:

(a) Completed application on forms provided by the department;

(b) Proof of completion of high school education or its equivalent;

(c) Proof of successful completion of the required education or approved training program;

(d) Proof of successful completion of an approved examination under WAC 246-827-0200(2), completed within three years prior to submission of an initial application for this credential;

(e) Proof of completing seven clock hours of AIDS education as required by chapter 246-12 WAC, Part 8;

(f) Any fee required in WAC 246-827-990; and

(g) Fingerprint cards for national fingerprint based background check pursuant to RCW 18.130.064(2), if requested by the department.

(2) An applicant who has met all the requirements in this subsection (2), except passage of the examination, may be issued an interim certification.

(a) A person who has an interim certification possesses the full scope of practice of a medical assistant-certified.

(b) A person who has an interim certification must notify their employer any time they fail any of the examinations listed in WAC 246-827-0200(2).

(c) A person's interim certification expires upon issuance of the medical assistant-certified credential or one year after issuance of the interim certification, whichever occurs first.

(d) A person cannot renew an interim certification.

(e) A person is only eligible for an interim certification upon initial application.

NEW SECTION

WAC 246-827-0230 Medical assistant-certified—Activities allowed or prohibited. A medical assistant-certified may perform functions authorized in RCW 18.360.050 (1) under the delegation and supervision of a health care practitioner as described in WAC 246-827-0110. The delegation and direction must be for functions within the scope of the medical assistant-certified and the medical assistant-certified must be able to safely and competently perform the function.

NEW SECTION

WAC 246-827-0240 Medical assistant-certified—Administering medications and injections. A medical assistant-certified shall be deemed competent by the delegating health care practitioner prior to administering any drug authorized in this section. Drugs must be administered under a valid order from the delegating health care practitioner and shall be within the delegating health care practitioner's scope of practice. The order must be in written form or contained in the patient's electronic health care record.

(1) Drug administration shall not be delegated when:

(a) The drug may cause life-threatening consequences or the danger of immediate and serious harm to the patient;

(b) Complex observations or critical decisions are required;

(c) A patient is unable to physically ingest or safely apply a medication independently or with assistance; or

(d) A patient is unable to indicate awareness that he or she is taking a medication.

(2) To administer medications, the delegator shall ensure a medical assistant-certified receives training concerning: Dosage, technique, acceptable route(s) of administration, appropriate anatomic sites, expected reactions, possible adverse reactions, appropriate intervention for adverse reaction, and risk to the patient. The delegator must ensure a medical assistant-certified is competent to administer the medication.

(3) A medical assistant-certified is prohibited from administering schedule II controlled substances, chemotherapy agents or experimental drugs.

(4) Except as provided in subsection (1) of this section, a medical assistant-certified may administer controlled substances in schedules III, IV, and V or other legend drugs when authorized by the delegating health care practitioner. Drugs shall be administered only by unit or single dosage or by a dosage calculated and verified by a health care practitioner. A medical assistant-certified shall only administer drugs by the level of supervision based on the route as described in subsection (5) of this section.

(5) A medical assistant-certified may only administer medications by the following drug category, route and level of supervision:

Drug Category	Routes Permitted	Level of Supervision Required
Controlled substances, schedule III, IV, and V	Oral, topical, rectal, otic, ophthalmic, or inhaled routes	Immediate supervision
	Subcutaneous, intradermal, intramuscular, or peripheral intravenous injections	Direct visual supervision
Other legend drugs	Intravenous injections	Direct visual supervision
	All other routes	Immediate supervision

(6) A medical assistant-certified may not start an intravenous line. A medical assistant-certified may interrupt an intravenous line, administer an injection, and restart at the same rate.

NEW SECTION

WAC 246-827-0300 Medical assistant-registered—Application. Registration requirements - Applicants for a medical assistant-registered credential shall submit the following:

(1) A completed application on forms provided by the department;

(2) Proof of completion of high school education or its equivalent;

(3) An endorsement signed by a health care practitioner;

(4) Proof of completing seven clock hours of AIDS education as required by chapter 246-12 WAC, Part 8;

(5) Any fee required in WAC 246-827-990; and

(6) Fingerprint cards for national fingerprint based background check pursuant to RCW 18.130.064(2), if requested by the department.

NEW SECTION

WAC 246-827-0310 Medical assistant-registered—Endorsement. (1) A medical assistant-registered shall have a current attestation, signed by a health care practitioner, of his or her endorsement to perform specific tasks that is filed with the department.

(2) The medical assistant-registered shall only perform the tasks listed in his or her current attestation of endorsement filed with the department.

(3) An endorsement is valid as long as the medical assistant-registered is continuously employed by the same health care practitioner, clinic or group practice.

(4) A medical assistant-registered shall submit a new attestation of endorsement to the department within thirty days if the tasks listed on the current attestation change.

NEW SECTION

WAC 246-827-0320 Medical assistant-registered—Credential termination. The medical assistant-registered credential terminates when the medical assistant-registered separates employment with the endorsing health care practitioner, clinic or group practice. The medical assistant-registered shall notify the department within thirty days of separation of employment. A person shall submit a new initial medical assistant-registered application as described in WAC 246-827-0300 upon new or additional employment.

NEW SECTION

WAC 246-827-0330 Medical assistant-registered—Collection of specimens. In order to collect a blood specimen, a medical assistant-registered may perform a finger or heel stick.

NEW SECTION

WAC 246-827-0400 Medical assistant-phlebotomist—Certification and training. Certification requirements - Applicants for a medical assistant-phlebotomist credential must meet the following requirements:

(1) Successful completion of an approved phlebotomy program through an accredited postsecondary school or college; or

(2) Successful completion of a phlebotomy training program. The phlebotomy training program must be approved by a health care practitioner who is responsible for determining the content of the training and for ascertaining the proficiency of the trainee. The phlebotomy training program must include the following:

(a) Training to include evaluation and assessment of knowledge and skills to determine entry level competency in the following areas:

(i) Responsibilities to be delegated which include ethical implications and patient confidentiality;

(ii) Patient identification process;

(iii) Procedure requesting process, including forms used, accessing process, and collection patterns;

(iv) Materials to be used;

(v) Anatomic considerations for performing such functions as venipuncture, capillary finger collection, and heel sticks;

(vi) Procedural standards and techniques for blood collection;

(vii) Common terminology and practices such as medical classifications, standard diagnoses, test synonyms, background information on procedures, and interferences;

(viii) Physical layout of the work place, including patient care areas; and

(ix) Safety requirements including infection prevention and control, dealing with a client who has an infectious disease, and the handling and disposal of biohazardous materials.

(b) Direct visual supervision by a health care practitioner or a delegated and certified medical assistant-phlebotomist to the trainee to ensure competency in the following:

(i) Practice technique in a simulated situation;

(ii) Observe and perform procedures on patients until the trainee demonstrates proficiency to be certified at the minimum entry level of competency. The trainee must have adequate physical ability, including sufficient manual dexterity to perform the requisite health care services. The number of specific procedures may vary with the skill of the trainee.

(c) Documentation of all phlebotomy training, duties, and responsibilities of the trainee must be completed, signed by the supervising health care practitioner and the trainee, and placed in the trainee's personnel file.

(d) A trainee must complete the training program and submit an application within ninety days of starting the phlebotomy training program to continue to perform procedures on patients.

(e) Training programs that meet the requirements described in this subsection are approved by the secretary.

NEW SECTION

WAC 246-827-0410 Medical assistant-phlebotomist—Application. Application requirements - Applicants for a medical assistant-phlebotomist credential shall submit the following:

(1) A completed application on forms provided by the department;

(2) Proof of completion of high school education or its equivalent;

(3) Proof of successful completion of an accredited phlebotomy program or successful completion of a phlebotomy training program as attested by the phlebotomy training program's supervising health care practitioner;

(4) Proof of completing seven clock hours of AIDS education as required by chapter 246-12 WAC, Part 8;

(5) Any fee required in WAC 246-827-990; and

(6) Fingerprint cards for national fingerprint based background check pursuant to RCW 18.130.064(2), if requested by the department.

NEW SECTION

WAC 246-827-0420 Medical assistant-phlebotomist—Supervision—Requirements for performing arterial invasive procedures and line draws. (1) The delegating health care practitioner does not need to be present when a medical assistant-phlebotomist is performing capillary or venous procedures to withdraw blood, but must be immediately available for consultation by phone or in person within a reasonable period of time.

(2) A medical assistant-phlebotomist may only perform arterial invasive procedures or line draws after the following education and training is completed and documented. A medical assistant-phlebotomist's training and education must be documented on a checklist, signed by the delegating health care practitioner and the medical assistant-phlebotomist, and placed in the medical assistant-phlebotomist's personnel file. The medical assistant-phlebotomist shall complete:

(a) Education to include anatomy, physiology, concepts of asepsis, and microbiology;

(b) Training to perform arterial invasive procedures for blood withdrawal and line draws, including theory, potential risks, and complications;

(c) Anatomic considerations for performing such functions as arterial puncture, line draws, and use of local anesthetic agents;

(d) Observation of the arterial invasive procedure and line draws; and

(e) Successful demonstration of the arterial invasive procedure and line draws under direct visual supervision of a health care practitioner.

(3) Upon successful completion of the training described in subsection (2) of this section, a medical assistant-phlebotomist may only perform:

(a) Arterial invasive procedures for blood withdrawal while under the immediate supervision of a supervising health care practitioner; and

(b) Line draws if the intravenous fluid is stopped and restarted by a health care practitioner under the immediate supervision of a supervising health care practitioner.

NEW SECTION

WAC 246-827-0500 Medical assistant-hemodialysis technician—Qualifications and training. (1) Applicants for a medical assistant-hemodialysis technician credential must complete the following requirements:

(a) Proof of a high school diploma or equivalent;

(b) Basic math skills including the use of fractions and decimal points;

(c) Either:

(i) Complete a hemodialysis training program as described in subsection (3) of this section; or

(ii) Have a national credential as a hemodialysis technician which is substantially equivalent to the hemodialysis training program described in subsection (2) of this section.

(2) The hemodialysis training program may be facility based or a state recognized training facility or institution of higher education specific to training hemodialysis technicians that meets the following requirements:

(a) The training program must:

(i) Be approved by the program or facility medical director and governing body;

(ii) Be under the direction of a registered nurse;

(iii) Be focused on the operation of kidney dialysis equipment and machines;

(iv) Include interpersonal skills, including patient sensitivity training and care of difficult patients; and

(v) Provide supervised clinical experience opportunities for the application of theory and for the achievement of stated objectives in a patient care setting. The training supervisor must be physically accessible to the hemodialysis technician when the hemodialysis technician is in the patient care area.

(b) The training program must cover the following subjects:

(i) Principles of dialysis and fluid management;

(ii) Care of patients with kidney failure, including interpersonal skills;

(iii) Dialysis procedures and documentation, including initiation, proper cannulation techniques, use of central catheters, monitoring, and termination of dialysis;

(iv) Use and care of hemodialysis accesses;

(v) Common laboratory testing procedures and critical alert values;

(vi) Possible complications of dialysis and dialysis emergencies;

(vii) Water treatment and dialysate preparation;

(viii) Infection control;

(ix) Use of hazardous chemicals;

(x) Safety;

(xi) Dialyzer reprocessing, if applicable; and

(xii) Use of medications used in dialysis and their side effects.

(c) The medical assistant-hemodialysis technician applicant, upon completion of the hemodialysis training program, must demonstrate competency of the following:

(i) Dialysis procedures and documentation, including initiation, proper cannulation techniques, central catheter techniques, monitoring, and termination of dialysis;

(ii) Operation of hemodialysis equipment;

(iii) Calculation of patient fluid removal and replacement needs;

(iv) Preparation and mixture of additives to hemodialysis concentrates as required by facility procedure based on patient prescription;

(v) Preparation and administration of heparin and sodium chloride solutions and intradermal, subcutaneous, or topical administration of local anesthetics during treatment in standard hemodialysis doses;

(vi) Provide initial response to patient complications and emergencies prior to, during, and after treatment per facility procedures including, but not limited to, the administration of normal saline per facility protocol;

(vii) Use and care of hemodialysis vascular accesses;

(viii) Administration of oxygen; and

(ix) Initiation of cardiopulmonary resuscitation.

(d) Technicians who perform monitoring and testing of the water treatment system must complete a training program that has been approved by the facility medical director and governing body.

(e) The training program may accept documentation of a medical assistant-hemodialysis technician's successful completion of training objectives in another dialysis facility or accredited academic institution if it is substantially equivalent to the core competencies described in this subsection. The dialysis facility that accepts the documentation assumes responsibility for confirming the core competency of the medical assistant-hemodialysis technician.

(f) Upon successful completion of the hemodialysis training program, an authorized representative of the hemodialysis training program will sign an attestation of completion of the training described in this subsection. The attestation shall include documentation of the satisfactory completion of a skills competency checklist equivalent to, or exceeding the competencies required by these rules.

(g) Training programs that meet the requirements described in this subsection are approved by the secretary.

NEW SECTION

WAC 246-827-0510 Medical assistant-hemodialysis technician—Application. Applicants for a medical assistant-hemodialysis technician credential shall submit the following:

(1) A completed application on forms provided by the department;

(2) Proof of high school education or equivalent;

(3) Proof of successful completion of an approved training program or proof of national credential as a hemodialysis technician;

(4) Proof of completing seven clock hours of AIDS education as required by chapter 246-12 WAC, Part 8;

(5) Current cardiopulmonary resuscitation certification;

(6) Any fee required in WAC 246-827-990; and

(7) Fingerprint cards for national fingerprint based background check pursuant to RCW 18.130.064(2), if requested by the department.

NEW SECTION

WAC 246-827-0520 Conditions for performing hemodialysis. (1) A medical assistant-hemodialysis technician trained by a federally approved end-stage renal disease facility may perform the following dialysis tasks:

(a) Venipuncture for blood withdrawal;

(b) Administration of oxygen as necessary by cannula or mask;

(c) Venipuncture for placement of fistula needles;

(d) Connection to vascular catheter for hemodialysis;

(e) Intravenous administration of heparin and sodium chloride solutions as an integral part of dialysis treatment;

(f) Intradermal, subcutaneous or topical administration of local anesthetics in conjunction with placement of fistula needles; and

(g) Intraperitoneal administration of sterile electrolyte solutions and heparin for peritoneal dialysis.

(2) A medical assistant-hemodialysis technician may perform the dialysis tasks described in subsection (1) of this section, under the following supervision:

(a) In a renal dialysis center under immediate supervision of a registered nurse; or

(b) In the patient's home if a physician and a registered nurse are available for consultation during the dialysis.

CREDENTIAL STATUS

NEW SECTION

WAC 246-827-0600 Credential renewal. A medical assistant credential must be renewed every two years on the medical assistant's birthday as provided in WAC 246-12-030.

NEW SECTION

WAC 246-827-0610 Expired credential—Return to active status. (1) A person holding an expired medical assistant credential may not practice until the credential is returned to active status.

(2) If the medical assistant credential has expired for less than three years, he or she shall meet the requirements of chapter 246-12 WAC, Part 2.

(3) If the medical assistant credential has been expired for three years or more, and he or she is currently practicing as a medical assistant in another state or U.S. jurisdiction, he or she shall (a) meet the requirements of chapter 246-12 WAC, Part 2, and (b) provide verification of a current unrestricted active medical assistant credential in another state or U.S. jurisdiction which is substantially equivalent to the qualifications for his or her credential in the state of Washington.

(4) If a medical assistant-certified, a medical assistant-hemodialysis technician, or a medical assistant-phlebotomist credential has been expired for three years or more and the person does not meet the requirements of subsection (3) of this section, he or she shall comply with chapter 246-12 WAC, Part 2, and demonstrate competence in one of the following ways:

(a) A medical assistant-certified must successfully pass an examination as identified in WAC 246-827-0200 within six months prior to reapplying for the credential.

(b) A medical assistant-phlebotomist must complete the training requirements of WAC 246-827-0400 within six months prior to reapplying for the credential.

(c) A medical assistant-hemodialysis technician must complete the training requirements of WAC 246-827-0500 within six months prior to reapplying for the credential.

(5) If the medical assistant-registered credential has expired, he or she must also submit a new application as provided for in WAC 246-827-0300.

NEW SECTION

WAC 246-827-0620 Inactive status. A medical assistant-certified, a medical assistant-hemodialysis technician, or a medical assistant-phlebotomist may obtain an inactive credential as described in chapter 246-12 WAC, Part 4.

NEW SECTION

WAC 246-827-0630 Retired volunteer medical worker credential. A medical assistant-certified, a medical assistant-hemodialysis technician, or a medical assistant-phlebotomist may obtain an initial retired volunteer medical worker credential as described in chapter 246-12 WAC, Part 12. To change a retired volunteer medical assistant credential to active status the person must follow the requirements of WAC 246-12-450.

WSR 13-08-084
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services)

[Filed April 3, 2013, 9:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-04-092.

Title of Rule and Other Identifying Information: The department intends to amend chapter 388-78A WAC to change the term "boarding home" to "assisted living facility" throughout the chapter in compliance with SHB 2056 passed in the 2011-2012 legislative session. The scope of this rule making is limited to the terminology change from "boarding home" to "assisted living facility."

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html or by calling (360) 664-6094), on June 4, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 4, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on June 4, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by May 21, 2013, TTY (360) 664-6178 or (360) 664-6094.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending these rules to comply with and be consistent with SHB 2056 to change the term "boarding home" to "assisted living facility."

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: Chapter 18.20 RCW.

Statute Being Implemented: Chapter 18.20 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Judy Johnson, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2591; Implementation and Enforcement: Lori Melchiori, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3), a small business economic impact statement is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or regulations.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b), a cost-benefit analysis is not required for rules adopting or incorporating, by reference without material change, Washington state statues [statutes] or regulations.

March 25, 2013

Katherine I. Vasquez

Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 13-10 issue of the Register.

WSR 13-08-085
PROPOSED RULES
STATE BOARD OF EDUCATION

[Filed April 3, 2013, 10:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-24-053.

Title of Rule and Other Identifying Information: Charter schools; authorizer oversight fee; Charter school applications—Timeline; Board certification of charter schools—Lottery; and computation of time.

Hearing Location(s): Federal Way School District, 33330 8th Avenue South, Federal Way, WA 98003, on May 8, 2013, at 3:00 p.m.

Date of Intended Adoption: May 9, 2013.

Submit Written Comments to: Jack Archer, Senior Policy Analyst, Washington State Board of Education (SBE), Old Capitol Building, Room 253, P.O. Box 47206, Olympia, WA 98504, e-mail jack.archer@k12.wa.us, fax (360) 586-2357, by May 1, 2013.

Assistance for Persons with Disabilities: Contact Jack Archer by May 6, 2013, TTY (360) 725-6025 or (360) 725-6035.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to receive public testimony on proposed rules to RCW 28A.710.110 Authorizer oversight fee—Establishment—Use, 28A.710.140 Charter applications—Submission—Approval or denial, and 28A.710.150 Maximum number of charter schools—Process—Certification—Lottery—Notice. The anticipated effects of the rules are as follows:

1. Establish a statewide formula for an authorizer oversight fee under RCW 28A.710.110 of four percent of each charter school's annual state operating funding, and of three percent after an authorizer has authorized ten charter schools.

2. Establish an annual statewide timeline for charter application submission and approval or denial that must be followed by all authorizers under RCW 28A.710.140(1), which timeline includes the annual date by which an authorizer must issue and publicize a request for proposals for charter school applications under RCW 28A.710.130(1), the date by which an authorizer receiving an application for a charter school must either approve or deny the proposal, and the date by which an authorizer must submit a report to the SBE under RCW 28A.710.150(2) on actions to approve or deny a charter application.

3. Establish a procedure for a lottery process under RCW 28A.710.150(3) to select approved charters for implementation, when the number of charter approvals reported to the SBE exceeds the number that may be certified within the limits on the maximum number of charter schools allowed under this statute.

4. Define "days" for the purpose of rules to chapter 28A.710 RCW.

Statutory Authority for Adoption: RCW 28A.710.110, 28A.710.140, and 28A.710.150.

Statute Being Implemented: RCW 28A.710.110, 28A.710.140, and 28A.710.150.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: SBE, governmental.

Name of Agency Personnel Responsible for Drafting: Jack Archer, Old Capitol Building, 600 Washington Street S.E., Olympia, WA, (360) 725-6035; Implementation and Enforcement: Ben Rarick, Old Capitol Building, 600 Washington Street S.E., Olympia, WA, (360) 725-6025.

A school district fiscal impact statement has been prepared under section 1, chapter 210, Laws of 2012.

School District Fiscal Impact Statement

WSR	**Title of Rule:** Chapter 180-19 WAC - Charter Schools Phase II	**Agency:** SDF - School District Fiscal Impact - SPI.

Part I: Estimates: No fiscal impact - there is no additional impact due to this rule adoption. The following is office of superintendent of public instruction's analysis on the fiscal impact of the legislation being passed.

Part IV: Capital Budget Impact: None.

A copy of the statement may be obtained by contacting JoLynn Berge, Old Capitol Building, 600 Washington Street S.E., Olympia, WA, phone (360) 725-6292, e-mail jolynn.berge@k12.wa.us.

A cost-benefit analysis is not required under RCW 34.05.328. None required.

April 3, 2013
Ben Rarick
Executive Director

Chapter 180-19 WAC

CHARTER SCHOOLS

NEW SECTION

WAC 180-19-060 Authorizer oversight fee. (1) The statewide formula for the authorizer oversight fee transmitted to an authorizer by the superintendent of public instruction, as provided for in RCW 28A.710.110, shall be calculated at four percent of the state operating funding allocated under RCW 28A.710.220, with the fee decreasing to three percent of the state operating funding after an authorizer has authorized ten charter schools.

(2) The board shall periodically review the adequacy and efficiency of the authorizer oversight fee for the purpose of determining whether the formula should be adjusted in order to ensure fulfilling the purposes of chapter 28A.710 RCW. In conducting the review, the board shall utilize the information on authorizers' operating costs and expenses included in the annual report submitted to the board by each authorizer as set forth in RCW 28A.710.100(4).

NEW SECTION

WAC 180-19-070 Charter school—Request for proposals. Each authorizer shall annually issue requests for proposals for charter schools. For the year 2013, a request for proposal must be issued by no later than September 22, 2013. Requests for proposals in all subsequent years must be issued no later than April 15th.

NEW SECTION

WAC 180-19-080 Charter school applications—Submission, approval, or denial. (1) An applicant, as defined in RCW 28A.710.010, seeking approval must submit an application for a proposed charter school to an authorizer by no later than July 15th of the year in which the applicant seeks approval. Provided, however, that an applicant seeking approval to operate a charter school in 2014 must submit an application to an authorizer by no later than November 22, 2013.

(2) An authorizer receiving an application for a proposed charter school must either approve or deny the proposal by no later than October 15th of the year in which the application is received; Provided, however, that for applications received in 2013, the authorizer must approve or deny the proposal by no later than January 22, 2014.

(3) The authorizer must provide the state board of education with a written report of the approval or denial of an applicant's proposal for a charter school within ten days of such action, but no later than October 25th, whichever is sooner. Provided, however, that for proposals for charter schools received in 2013, the report must be received within ten days of the action, but no later than February 1, 2014, whichever is sooner. The notice must comply with the requirements set forth in RCW 28A.710.150(2). The report shall be sent to the board via electronic mail to sbe@k-12.wa.us.

NEW SECTION

WAC 180-19-090 Board certification of charter schools—Lottery. (1) Upon receipt of notice from an authorizer that a charter school has been approved, the chair of the state board of education shall certify whether the approval is in compliance with the limits on the maximum number of charters in RCW 28A.710.150. Certification from the state board of education must be obtained before final authorization of a charter school. The certification of a charter school shall be posted on the board's web site.

(2) If the board receives notification of charter approvals under this section on the same day, and the total number of approvals exceeds the limits in RCW 28A.710.150(1), the board will select approved charters for certification through a lottery process as follows:

(a) The board shall notify the authorizer that the approved charter school has not been certified by the board for operation and must be selected for certification through a lottery.

(b) Within thirty days after determining that the limit for charter schools has been exceeded, the board shall conduct a lottery, as required by RCW 28A.710.150(3), at a publicly noticed meeting to select and certify approved charters for implementation. The board shall randomly draw the names of charter schools from the available pool of approved charter schools that have not been certified until the maximum allowable total number of charter schools has been selected.

(i) A charter school shall be certified by the board for operation commencing in the following school year so long as the total number of charter schools that may be established in any single year under RCW 28A.710.150 is not exceeded.

(ii) Once the total number of charter schools that may be established in any single year under RCW 28A.710.150 is exceeded, the board shall certify a charter school for operation in a subsequent year based upon the charter's selection in the lottery.

NEW SECTION

WAC 180-19-200 Computation of time. (1) "Days" means calendar day whenever used in this chapter, unless otherwise specified. The period of time for performing an act governed by this chapter is determined by excluding the first day and including the last day, unless the last day is an official state holiday, Saturday, or Sunday, in which event the period runs until the end of the next business day.

(2) If a specific due date is established under this chapter, and that date falls on a Saturday, Sunday, or official state holiday, such period is automatically extended to the end of the next business day.